
PROGRAM MANAGEMENT PLAN

(PgMP)

CULTURAL RESOURCE PROGRAM

September 2002



U.S. Army Corps of Engineers
Omaha District
Northwestern Division

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Appendix N – Lake Francis Case Cultural Resource Management Plan (not yet available)

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a) Purpose. The original Cultural Resource Management Plan, presented in MRO Pamphlet 1105-2-1 (11 June 1982), established "...guidance and procedures for the management of cultural resources at all Civil Works projects in the Omaha District." Several changes in laws and regulations have required a re-evaluation of the scope of the program. While most of the activities are still centered on the Civil Works projects within the district boundaries, the program also has impacts on the Military, Hazardous, Toxic and Radioactive Waste, and Work For Others programs. Therefore, it was necessary to expand our program purpose statement to read as follows:

"To be effective stewards of cultural resources located on Federal lands owned and operated by the Omaha District Corps of Engineers, by proactively developing relationships with interested parties, identifying issues, and subsequently resolving those issues to the extent allowed by federal law, executive orders, regulations and related guidance, and budget constraints. To also provide support to our customers in their needs concerning cultural resource activities and compliance"

The cultural resources program transcends internal division boundaries to effectively implement its purpose statement. The program is not carried by a few people, but implemented by all personnel within the district. In accordance with acceptable business management processes the Planning, Programs and Project Management Division is responsible for the successful implementation of the program throughout the district. The District Commander and several Division Chiefs are full participants in the program.

b) Overview. Archeological properties are only a part of the cultural resources that the Corps of Engineers is required to manage and preserve. The term "cultural resources" refers to any building, site, district, structure, object, data, or other material significant in history, architecture, science, archeology, or culture. Cultural resources management refers to the management of these types of resources. The fields of expertise needed to manage cultural resources effectively include archeology, cultural anthropology, history, architecture, engineering, information and archive management, and museum curation and conservation.

The terms "cultural resources" and "historic properties" are sometimes used interchangeably, however, they have different meanings that are reflected in Department of Defense regulations. Historic properties are sites and districts that are eligible for inclusion in the National Register of Historic Places. The term "cultural resources" includes historic properties and other property types.

Historic sites are properties eligible for the National Register of Historic Places. The National Register is an inventory of historic properties important in our Nation's history, culture, architecture, archeology, and engineering. The National Register office in the National Park Service maintains the inventory. Properties eligible for the National Register must be at least 50 years old or possess unusual significance. Properties can be significant at national, state, or local levels and include districts, sites, buildings, structures, and objects. Only the "Keeper" of the National Register, acting through the

authority of the Secretary of the Interior, can actually list a property on the National Register.

The term “historic preservation” includes a broad range of activities as formally defined in the National historic Preservation Act of 1966. These activities include “identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, and education and training regarding the foregoing activities or any combination of the foregoing activities.” It is important to emphasize this definition as many federal agency employees and members of the public view historic preservation in a narrowly defined manner as the actual in-place preservation of a historic property. The intent of Congress is not to preserve every site listed on the National Register of Historic Places, and there are times when the public benefits of a federal project clearly outweigh the preservation of a specific historic property.

c) Basic Cultural Resource Management. There are seven basic program elements in a comprehensive federal resource management program. These basic program elements are: compliance with Section 106 of the National Historic Preservation Act; the proactive management of historic properties as required by Section 110 of the National Historic Preservation Act; the protection of archeological sites as required by the Archeological Resource Protection Act; the protection and repatriation of Native American human remains and various cultural items as required by the Native American Graves Protection and Repatriation Act; compliance with the American Indian Religious Freedom Act and Executive Order 13007 protecting and guaranteeing access to Native American sacred sites on federal lands; a public education program as required by Section 10(c) of the Archeological and Resources Protection Act; and the proper care and curation of artifacts associated with historic properties as required by Section 101 (a)(7) of the National Historic Preservation Act. Before these program elements are described it is useful to identify the primary federal and state agencies involved in cultural resource management.

The Advisory Council on Historic Preservation is an independent federal agency created by the National Historic Preservation Act. It advises the President and Congress on historic preservation matters, and it is responsible for writing regulations implementing Section 106 of the National Historic Preservation Act. It also reviews federal agency historic preservation programs and policies. The Council’s 20 members include the Secretaries of Interior and Agriculture and four heads of other federal agencies, a governor, a mayor, eight private individuals, a Native American representative, the Architect of the Capitol, the chairman of the National Trust for Historic Preservation, and the president of the National Conference of State Historic Preservation Officers. The Council’s staff is composed of an executive director, historians, architects, archeologists, planners, lawyers, and administrative personnel.

In 1935 Congress designated the National Park Service as the primary historic preservation agency in the federal government. As directed by the National Historic Preservation Act of 1966, the National Park Service maintains the National Register of Historic Places, provides technical information and guidance to other federal agencies,

and establishes standards for historic preservation activities. It administers the Historic Preservation Fund grants-in-aid programs to the states and Indian tribes. It operates the National Historic Landmarks program, the Historic American Building Survey, the Historic American Engineering Record, and the Certified Local Governments program. It also reviews State Historic Preservation Programs.

The State Historic Preservation Office (SHPO) is an office in state government established by the National Historic Preservation Act. The Governor in each state appoints the State Historic Preservation Officer, although many state legislatures have passed laws designating whom the governor may appoint. The SHPO is responsible for administering a statewide historic preservation program. The program includes maintaining an inventory of historic properties (which includes some archeological sites) in the state, identifying and nominating historic properties to the National Register, and preparing and implementing a comprehensive statewide historic preservation plan. The SHPO also advises and assists federal, state, and local units of government in preservation matters and consults with federal agencies when federal undertakings affect historic properties. By law, the SHPO maintains a professional staff of at least one of each of the following: historian, architectural historian, archeologist, and grants administrator. More frequently, the SHPO has a larger staff that includes historic architects, prehistoric and historic archeologists, planners, and other preservation experts. The Advisory Council on Historic Preservation's website (www.achp.gov) maintains a state-by-state list of the current SHPO.

Indian tribes, Native Alaskan corporations, and Native Hawaiian groups have a keen interest in the preservation of archeological and historic properties relating to their cultures. This interest has been recognized in the National Historic Preservation Act in different ways. Section 101(d)(2) allows Indian tribes to establish their own historic preservation offices, and they can assume all or part of the State Historic Preservation Office's responsibilities on tribal lands. Section 101(d)(6)(A) states unequivocally that properties of religious and cultural value to Indian tribes can be listed on the National Register of Historic Places. Also the Act requires federal agencies to consult with Indian tribes if their Section 106 undertakings will affect sites of religious or cultural importance to the tribe (Section 101(d)(6)(B)). A number of tribes have established tribal preservation programs and have taken over SHPO responsibilities for their tribal lands. The Advisory Council on Historic Preservation's website maintains a current list of the approved tribal programs.

The Corps of Engineers is required to have a cultural resource program. The Advisory Council, the National Park Service, and the State and Tribal Historic Preservation Offices can provide technical assistance and advice, but it is the Corps responsibility to manage cultural resources on Corps-owned lands. Engineering Regulations 1105-2-100 and 1130-2-540 provide the basic guidance for the Corps civil programs.

d) Authorities and Policies. The cultural resources policy of the Omaha District is to preserve and protect significant cultural resources in a spirit of stewardship for the nation. As mentioned previously, inherent in this policy is the responsibility for locating,

identifying, and evaluating cultural resources for their eligibility to the National Register of Historic Places. Once these cultural resources have been determined eligible for the National Register of Historic Places, it is our responsibility to preserve them in perpetuity or to mitigate them if they cannot be preserved. It is our goal to properly care for significant sites, stabilizing those sites threatened by erosion, mitigating those sites where stabilization is not an option, encouraging and enabling adaptive reuse of historic structures, and showcasing the historic and prehistoric sites on District lands, as appropriate. It is understood that laws and regulations are the primary elements that shape policy. Therefore Appendix C stipulates the laws, regulations and agreements that pertain to cultural resources. A brief synopsis of each the law or regulation is provided in the Appendix C. The laws and regulations are broken down into four sections; Public Law (including Uniform Standard Code and Code of Federal Regulation references), Executive Orders, Other Federal Guidance, and Corps of Engineers Regulations.

e) Goals and Objectives. The Omaha District annually develops goals and objectives to guide the activities and decision making for the upcoming fiscal year. Once these are set then there is a standard against which the organization can measure its success. Being able to meet the goals and objectives is critical to the District and it's ability to reach its strategic vision as "The world's premier public engineering organization responding to our nation's needs in peace and war." Currently, Headquarters has asked that our goals be focused on People, Process and Communication. Therefore the cultural resource program has developed it's goals around the those three areas.

Annually we review our long-range goals to make sure they are still relevant and in line with District and Division goals. Then based on that review we determine realistic objectives that will help us obtain our goals. Finally once the goals and objectives are set we determine specific actions that need to take place to achieve our objectives. Within the context of the five-year plan we set objectives and action plans that will help ultimately achieve the long-range goals. Appendix A contains the long-range goals and objectives for the cultural resources program. Specific action plans to accomplish each objective are also contained in Appendix A.

a) Customers. The Cultural Resource program provides services for many different customers. Traditionally the District Civil Works Program is our main customer. The Civil Works program has two primary customers, the Operations Division and the Planning, Programs and Project Management Division (PPPMD). The Operations Division is responsible for the land on and adjacent to Corps owned dams and reservoirs. Our support for Operations Division consists of review and implementation of the laws and regulations for historic preservation (i.e., National Historic Preservation Act, Section 106, Native American Grave Protection and Repatriation Act, etc.). Support for the Planning, Programs and Project Management Division is similar in nature, but project specific. Compliance with the laws and regulations is an important component in the completion of a PPPMD project. Additional customers are state, city, and county governments for projects not located on Corps owned property. But more recently Military, Hazardous, Toxic and Radiological Waste (HTRW), and Support for Others (SFO) customers have requested our services. Typical customers in those areas are Army and Air Force Commands and Installations, HQUSACE on Former Used Defense Sites (FUDS), and the Environmental Protection Agency, and other (non-military) Federal Agencies.

b) Program Budget Development. The primary program budget development process is described in Engineering Circular (EC) 11-2-181. This circular describes the “Corps of Engineers Civil Works Direct Program” and provides guidance on the development and submission of the Corps of Engineers direct Civil Works Program for the current program year and appropriate out year periods. The cultural resources program is part of the Environmental Stewardship business function of the “Operation & Maintenance, General – Project Operation and Maintenance” program, Civil Works direct program. Appendix J provides a brief summary of the program development principles, the development and review processes, and the funding level designations.

The personnel involved in the Cultural Resource program provide input into the development of program requirements. Appendix L contains a comprehensive list of completed and planned activities accomplished through the cultural resource program for Corps owned projects in the Omaha District. The Cultural Resource Management Plans, a summation of the projects at each lake are critical to the development of the program requirements. Each of the Lake offices will have a CRMP that they use to prioritize the requirements. The Lake CRMP's, where completed are included in Appendices M through R.

c) Acquisition Strategy. An Acquisition strategy plan will be completed for required projects (as detailed in Appendix E). The Omaha District Integrated Process Team (IPT), Program and Project Managers will ensure that the Cultural Resources Acquisition Strategy will be followed. The cultural resource program has three goals that it uses as guides for the execution of the acquisition strategy plan. They are to a) continue to provide maximum practicable business opportunities to small business concerns (specifically Native American businesses), b) collaborate with its Public and Private Partners to enhance the technical and professional development of small business concerns, and c) utilize the best contracting tool available to complete the

given requirements. Details on how the Cultural Resources Program plans to meet goals a) and c) are laid out in Appendix E. The Cultural Resources Program Manager will work with and support the Omaha District Small Business Manager and contracting personnel to accomplish goal b) within the context of activities they are currently undertaking.

d) Project Management Plan. All projects completed in the cultural resource program will have a project management plan. Projects that are short in duration or under \$50,000 in value will not be required to complete a full Project Management Plan (PMP). Projects meeting these criteria will be required to establish a clear definition of what the customer needs, a customer approved schedule and a agreed upon budget for completion. Projects that have a longer duration or are over \$50,000 in value will be required to complete a full PMP. The PMP shall clearly document four items, a) the product delivery team, b) a budget and schedule, c) a quality control plan, and d) a project closeout plan. A PMP example is included in Appendix F. These four requirements are further detailed in the following paragraphs.

i) Product Delivery Team. A product delivery team (PDT) shall be established to define who is responsible for completing the project on time and within budget. This team shall have all disciplines required to complete the required product.

ii) Budget and Schedule. A budget and schedule shall be prepared for all projects completed. The budget and schedule shall be developed at the very beginning of the project and updated periodically, so all PDT members will know how the project is progressing and performing.

iii) Quality Control Plan. A Quality Control Plan (QCP) shall be developed for each project. The QCP shall document the PDT and the actions that will be taken to ensure the quality of the product. Each step of the quality review process shall be detailed and personnel responsible assigned. While this does not have to be an extensive document it should be complete and have sufficient detail to ensure that the final product will be the best possible under the circumstances. Requirements for the Quality Control Plan are included in Appendix B.

(1) Roles and Responsibilities. The following are the positions that have a role to play in the successful implementation of this QCP. Their responsibilities are outlined in the following paragraphs.

(a) Program Manager. The program manager is required to review and approve any changes to the QCP. This review should be conducted on an annual basis to ensure that the procedures are relevant, accurate and accomplishing the intended purpose. The review shall be documented and shared with those involved in the using the QCP process.

(b) Project Manager. The Project Manager is responsible for the proper execution of the QCP on all projects within the cultural resource program. They are

responsible to ensure that all steps are followed and properly documented. Quality products are the desired outcome of implementing this process, therefore the project manager is responsible to prepare and submit any changes to the QCP. Suggested changes may serve to improve the efficiency or methods by which work is accomplished or managed within the program, to enhance the quality of work produced, or to improve the content or format of the QCP itself. Occasionally the project manager has a dual responsibility as the technical specialist. In this case both roles and responsibilities must be fulfilled to meet the goal of the QCP.

(c) Archeologist. When the archeologist is not acting as the project manager on a product there are certain responsibilities that must be completed. The archeologists are responsible to become familiar with and understand the processes and procedures contained in this QCP. They are also encouraged to suggest changes to this QCP at any time. Suggested changes may serve to improve the efficiency or methods by which work is accomplished or managed within the program, to enhance the quality of work produced, or to improve the content or format of the QCP itself. All recommendations for changes should be forwarded through normal supervisory channels and addressed to the Cultural Resource Program Manager.

iv) Project Closeout Plan. A brief closeout plan shall be prepared to complete the project both physically and administratively. The closeout plan shall detail how project files will be archived, how finished documents will be stored, the financial completion process, and how customer feedback/lessons learned will be obtained and implemented.

e) Agreements. The Omaha District enters into formal Memoranda of Agreements and Programmatic Agreements as required by governing laws and regulations. It is also good business to agree upon the methods that will be followed when dealing in the sensitive area of cultural resources. We continue to strive to finalize agreements into formal documents whenever possible. Current agreements that the district is party to are included in Appendix C.

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To have a successful program you need to understand how communication happens, what avenues are going to be used to communicate actions, and how to learn from communication you receive concerning the program. This chapter details the communications plan that is in place for this program and how we manage information in the development and execution of the program.

a) Communications Plan. The Cultural Resources Communication Plan realizes that there are several avenues that must be used to effectively communicate. Rarely will a message be communicated and received by using only one method. Therefore the following, multi-faceted approach is being used to communicate with our stakeholders, customers and the general public.

i) Integrated Process Team for Cultural Resources. The district has established an Integrated Process Team (IPT) for cultural resources (Figure 3-1) to develop the direction of the program and to ensure proper coordination among all district elements. Headed by the Cultural Resources Program Manager, this team is composed of representatives from each division within the district that has involvement in the cultural resource arena. The Program Manager is part of the Environmental, Economics and Cultural Resources section in Planning Branch of PPPMD. Current members and a Charter for this team are included in Appendix G.

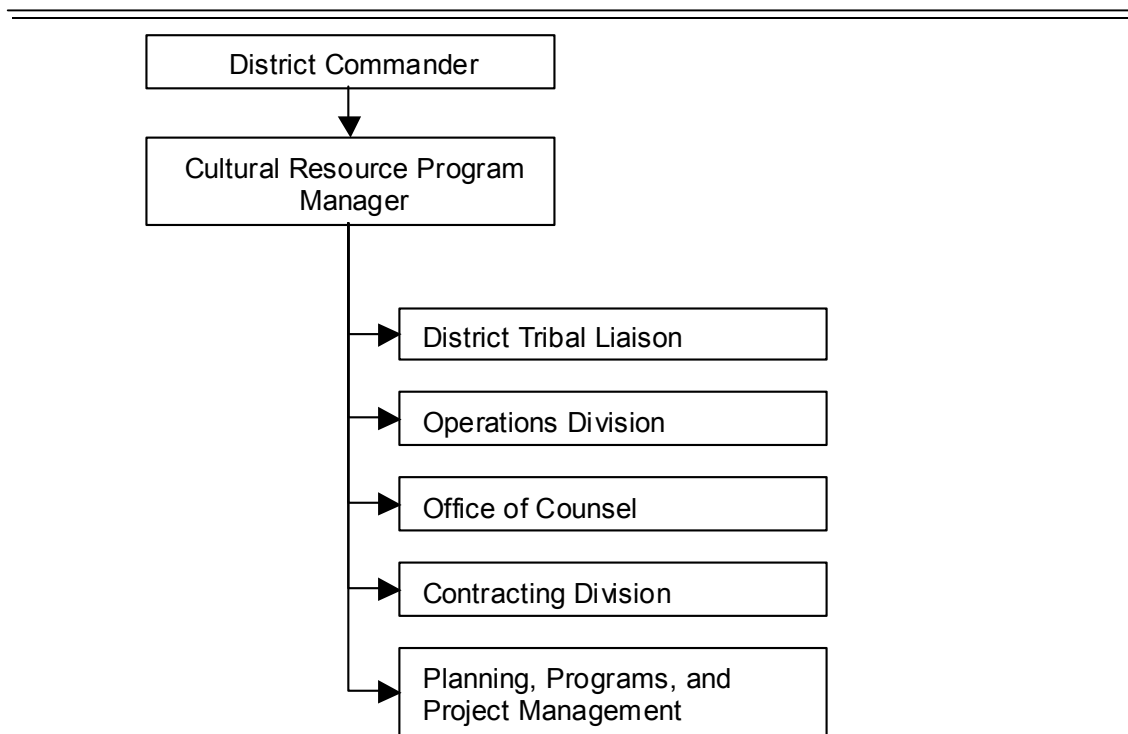


Figure 3-1. Integrated Process Team for Cultural Resources

ii) Cultural Resources Task Force. The Cultural Resource Task Force (Figure 3-2) was established to solicit consensual Tribal and other agency advice and recommendations, and to involve task force members in decision-making prior to the

more formal consultation with all Tribal leaders and other Federal, State, and Local agencies. The formation of this task force fit into the approach that the district wanted to pursue, which was a forum for involvement of all stakeholders in the success of the program. Where the IPT is essential in internally coordinating and gathering consensual advice and recommendations the Cultural Resources Task Force is essential in doing the same external to the Corps of Engineers.

Specifically, the purpose of the Cultural Resource Task Force is to share Omaha District cultural resource program information, allow for input and involvement of all members, assign and implement the agreed upon actions and monitor accomplishments of the program/Task Force. Current Members of the Task Force are listed in Appendix G along with the current charter.

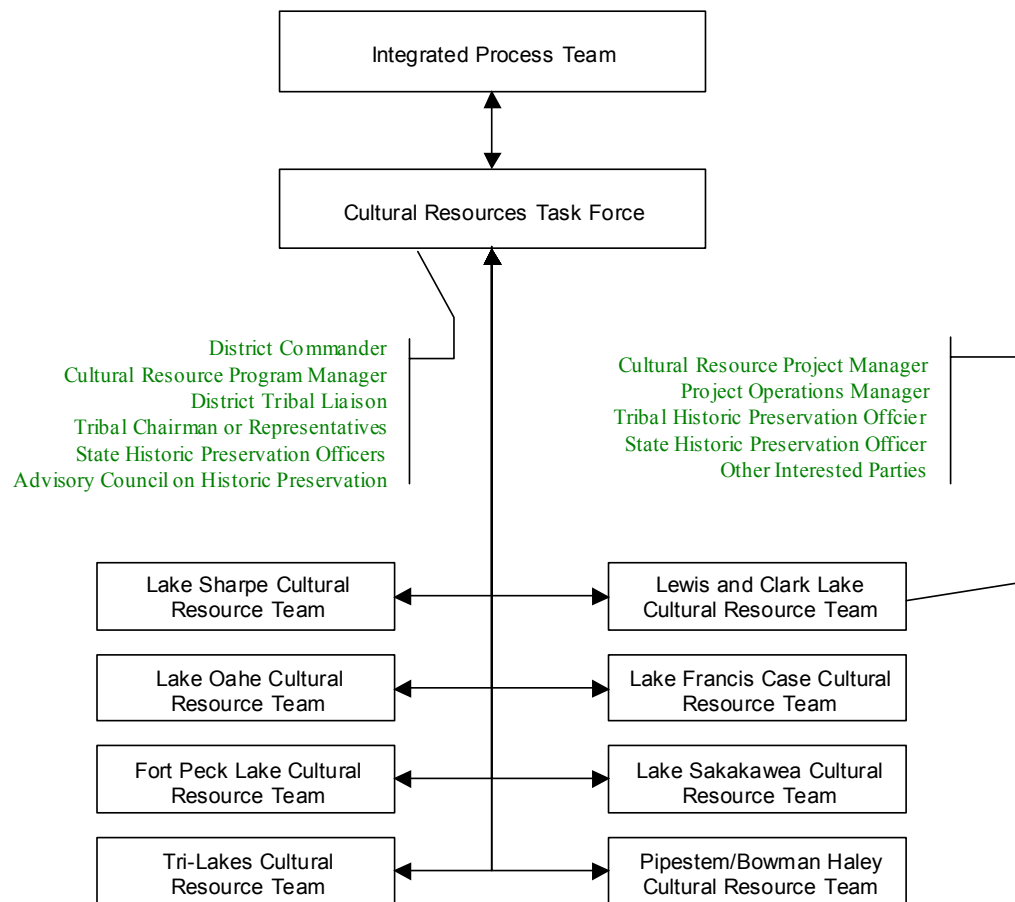


Figure 3-2. Cultural Resource Program Structure

iii) Project/Lake Cultural Resources Team. Depending on the recommendations from the Cultural Resource Task Force and the Integrated Process

Team, the potential exists for the formation of individual project/lake teams (Figure 3-2). It is anticipated that these teams would be the cultural resource programs main interface with other federal agencies, state agencies, Native American tribes, other interested groups and the public. The teams would be responsible for the planning, prioritization and implementation of the cultural resource program effecting federal lands in the project/lake area. The team is composed of the project operations manager, the Omaha District Project Manager, effected Tribal Historic Preservation Officer's, State Historic Preservation Officer's, other interested parties and the Advisory Council on Historic Preservation (when required). It is anticipated that there would be eight teams, one for each Missouri River main stem project, a team for the Pipestem/Bowman Haley, North Dakota projects, and a team for the three Tri-Lakes projects. Charters would be developed and included in Appendix G when completed.

iv) Tribal Consultation. There are twenty-eight Tribes located within the Missouri River basin. The geographic boundaries of the Missouri River basin include the homes and lands of several bands of Lakota, Dakota, and Nakota. In addition, several other Tribes occupied aboriginal homelands in the basin but have since relocated to other regions of the country. In an effort to involve the Tribes of the region in the program activities we have developed two documents that describe how we plan to involve the Tribes.

The first is the Northwestern Division Native American Program Desk Guide, a guide for Tribal consultation provided by the Northwestern Division. The Desk Guide sets forth guidelines to be followed in the implementation of a consultation program or procedure. Each District is responsible to develop it's own consultation plan. The Desk Guide is included in Appendix H. The second document is the Tribal Consultation Outline. This outline provides a procedure for the Omaha District to follow that provides interaction to establish a process and guidelines for meaningful consultation. Responsibilities for consultation will be met and shared between the District and the appropriate Tribes. Coordination and cooperation will be the foundation. The outline is included in Appendix H.

These guidelines are not intended to replace specifically mandated consultation requirements, such as those identified in the National Historic Preservation Act or the Native American Graves Protection and Repatriation Act implementing regulations. Rather, they would provide a framework for implementing those requirements.

v) Public Notices/Announcements. Official announcements or requests are distributed through the Public Notice system. All notices are composed and reviewed internally to ensure the proper message is being conveyed. After the development, review and approval process has been completed the Omaha District Public Affairs office (PAO) receives the information for distribution to local, regional or national media and agencies. The public affairs personnel will handle routine items. Items that will effect or benefit the entire basin, district or a specific region are examples of information that will be disseminated through PAO. At the discretion of the program manager and designated public affairs personnel, the PA office will handle most incoming media requests.

vi) Internet Web Site. An additional means of data dissemination and information sharing is the Cultural Resources website. The website is part of the Omaha District website and can be located at the following address: <http://www.nwo.usace.army.mil>. The website contains information on the program including mission and purpose, goals and objectives, laws and regulations, agreements, project plans, and other documents. The purpose of the website is to provide information to the public in a timely and efficient manner.

vii)Public Presentations. In an effort to help outside agencies and possible stakeholders understand the missions of the cultural resource program, public presentations will be made. These shall include local, regional and national in scope with all cultural resource personnel involved during the year. These forums give others the opportunity to understand what we accomplish, the current status of the program and an opportunity to ask questions. It also allows cultural resource personnel to educate the public, both young and old on the importance of cultural resources to our national heritage.

viii) Customer Feedback. Feedback for the program is actively sought and given as part of the implementation of the above referenced teams. Feedback is documented through meeting minutes, participant notes or other means and discussed as the meetings progress. Follow-up is assigned to a specific person to ensure accountability for an action. Customer feedback is obtained by project and by program. After the completion of each project feedback is solicited from all that were involved in the project. This would include the PDT, internal customers and external customers. The project manager solicits feedback either verbally or in writing in an effort to determine what went well on the project and what could be improved on future projects of a similar nature. All information is entered into the lessons-learned program.

Annually the program manager sends out a questionnaire to all parties that had interaction with the cultural resource program. The questionnaire is sent to gather feedback on the program performance as well as to help establish goals and objective for the upcoming year. This questionnaire is distributed during the month of August each year. Feedback is compiled and distributed to all those personnel involved in the cultural resource program. All information is entered into the lessons-learned program.

ix) Lessons Learned. The lessons learned program is an essential tool used to provide cultural resource personnel with specific and timely feedback. The feedback is intended to improve the programs customer service and performance. The information is contained in the DrChecks program. These comments are entered as feedback is received, so all program participants can see the information by querying the database.

b) Information Management. Information management is essential to the success of the cultural resource program. Information that cannot be found, is inaccurate or is misleading will not help the program progress and improve. The main location of all cultural site information is the Cultural Resource database. Unofficial and official project files are also kept. These three areas are the main repositories of all internal cultural resource information. External repositories of information will not be covered in this plan.

i) Cultural Resource Database. The cultural resource database was developed to support the gathering and updating of archeological site information. It continues to grow by adding new sites and Traditional Cultural Properties. The data contained in the database consists of historical data, including the most recent data received from reports and site visits. This database feeds the GIS system that allows the sites to be visually represented. Cultural resource personnel maintain the database while the Information Management personnel in the district maintain the GIS system.

ii) Unofficial Project Files. Each project manager has a file of information at their desk that pertains to the projects that they are or have worked. This file is called an unofficial file because the information contained in the files does not meet the requirements of the Modern Army Record Keeping System (MARKS). Examples of information contained in unofficial project files are interoffice correspondence, working copies of reports, telephone conversation records, phone numbers, preliminary draft and draft reports, etc. These items are not required to be retained after project completion. It is expected that each project manager have at least one project file folder for each project. On the top of the folder the name of the project should be clearly displayed.

iii) Official Project Files. Official project folders are kept at the Section secretary desk. These files are ones that meet the requirements of the MARKS system and are labeled accordingly. Examples of official project files are external written correspondence, final reports, legal transcripts of meetings, etc. While these items can also be kept at the project manager's desk the original should be kept in the official project folder. When a project is completed all official information will be transferred to the Official project folders, if not already contained in the folders. Each item in the folders shall be marked and maintained according to the requirements contained in the MARKS handbook.

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Change Management is the process needed to assure that changes are not made to a program or project without the review and approval of the appropriate personnel. Appropriate change management is handled through the effective use of management control and implementation of a change management process. The mechanism that is used to coordinate change Management is the Project Review Committee (PRC) and the Project Review Board (PRB). The committee and board are discussed later in the Chapter. The process of reporting change and progress is also important. The reporting process will be explained in more detail.

a) Management Control. Management control consists of the methods used to authorize, direct, and measure costs, schedule, and technical performance, compare that performance to baselines, analyze variances, and take corrective action as required.

The Cultural Resources program is being managed under the Program Management Business Process (PgMBP). The primary USACE guidance for management control under PgMBP is ER 5-1-11 "Program and Project Management", dated 17 August 2001, and any subsequent revision. From time to time, project management guidance letters on specific topics are also issued by HQUSACE.

The District Commander, through the Deputy District Engineer for Project Management (DDEPM), is responsible for effective programs and project management. Management oversight and coordination is focused on the monthly PRB at district, division and HQUSACE levels. The Cultural Resources Program Manager is the main interface with the PRB representatives. The district PRB approves the Program Management Plan (PgMP) and Project Management Plans (PMP's) and evaluates their performance. Changes to both plans are to be approved by the PRB. The district PRB also identifies actions to resolve issues and takes action on schedule and cost changes requests within the limits of its authority. The higher-level PRBs perform a similar role, with broader authority.

Projects within the program are executed under the leadership of a project manager, who will be the primary point of contact (POC) with all elements outside of cultural resources. The project will be covered by the written PMP, which includes baseline cost and schedule estimates and performance criteria. The PMP is developed by the project manager in conjunction with the team members of each technical function contributing to the project. The PMP includes activities performed by USACE or the contractor. The PMP documents the USACE commitments required for project development and provide a common understanding among all parties involved.

The project manager exercises management control by allocating funds to each technical function, monitoring physical progress, including major milestones, checking labor expenditure reports, preparing budget and schedule change requires, updating the PMP, reviewing documents, and preparing required management reports. The project manager will oversee any and all contractors that are completing all or portions of the work required. Communication with all outside parties will be done through the project

manager. The program communication plan shall be utilized to the maximum extent possible.

b) Change Control Plan. This consists of the procedures for controlling changes to the program or to the projects within the program. Changes to the program are usually in policy or procedure. The Program Manager initiates changes or receives requests from other district elements for changes. The change request must state who is requesting the change, a description of the change, the date the change is needed, the date of submission of the change request and a signature of the one submitting the change request. Action is taken on the changes at the appropriate authority level. The greater the change, the higher level of authority required for action. Changes to the PgMP are to be approved by the PRB.

At the project level, procedures for controlling changes to the project scope, schedule, or budget are usually reviewed. These procedures are specified as part of the PMBP process. The Project Manager initiates changes or receives requests from other district elements for changes. The change request must state who is requesting the change, a description of the change, the date the change is needed, the date of submission of the change request and a signature of the one submitting the change request. Action is taken on the changes at the appropriate authority level. The greater the change, the higher level of authority required for action. Changes to the PMP are to be approved by the PRB.

PDT members are responsible for identifying any changes in scope, budget, or schedule as early as possible so that the PM can resolve the issue, approve the change, or elevate the change to the appropriate level for action. The greater the change and its impact to the study, the higher the level of authority that may be required for action. Changes that affect the overall scope, budget, or schedule require approval by the Program Manager. The Program Manager will maintain a record of approved changes and will modify the PgMP accordingly.

c) Project Review Committee/Board. The district has established a group called the project review committee (PRC) that reviews all projects and programs throughout the district. This committee meets once a month to review progress to the various projects on-going in the Civil, Military and Hazardous and Toxic Waste programs. The Cultural Resource Program is part of the Civil Works Program. Each month the Cultural Resource projects that are ongoing or ones that will be accomplished in the current fiscal year are reviewed at the meeting of the PRC. The PRC is composed of Division and Section Chiefs.

In addition to the PRC the district has established the project review board (PRB). This board is comprised of upper management, specifically Division Chiefs, and is lead by the District Commander. The purpose of this board is to review those projects that the PRC believes need input from the executive level staff or projects that they need to be made aware. As mentioned earlier, if a project management or program management plan needs to be changed, then change is often approved during this monthly meeting.

d) Reporting Requirements. The project management reports to higher authorities are made through the PRB. The Program Manager prepares most reports. The purpose of these reports is to monitor accomplishment of project and program objectives, identify trends and issues, and forecast changes to scheduled and costs.

Periodically, internal reports will need to be prepared for various purposes. Milestone reports showing tasks, funds, and dates for work requests from various functional divisions within the district are prepared so that the district workload may be planned. Reports showing past and estimated future expenditures are prepared for budget planning. These internal reports are prepared monthly, quarterly, or annually, according to established district procedures. One or more fact sheets with condensed information about the program or projects are maintained to provide background information to higher authority or to respond to inquiries. Some informal internal reports are made for recording purposes. These include trip reports, telephone call memoranda and minutes of meetings. These are usually kept in project files at the district offices.

The customer shall be provided, at least semiannually, financial information for the program and/or projects, consistent with public law, regulation, and good business practice.

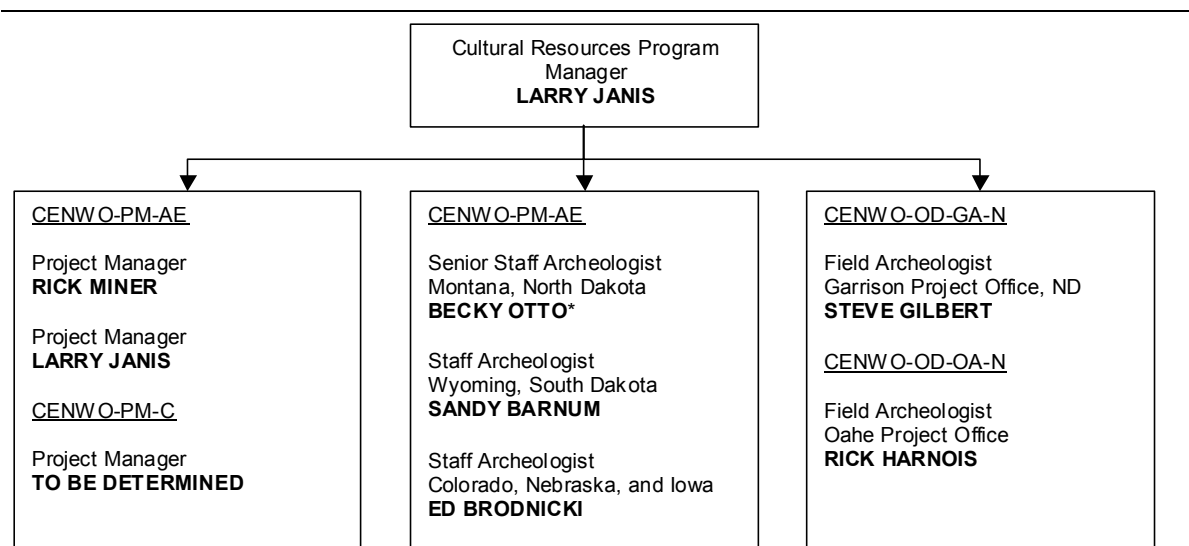
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Program resources are primarily the people that on a daily basis work and execute the cultural resource program. In addition to the staff we have an independent review team, the Integrated Process Team (IPT) that oversees the program and offers constructive advice and direction. The IPT is described in detail in Chapter 3.

a) Cultural Resources Staff. The current staff of the cultural resources program is comprised of one program manager, three project managers, one senior staff archeologist, two staff archeologists, and two field archeologists. Figure 5-1 shows the organization structure. The staff is responsible for carrying out the day-to-day requirements of the program.

i) Program/Project Manager. The duties of the Program and Project Managers are to:

- Coordinate and execute assigned projects.
- Review and evaluate the status of projects for attainment of objectives,
- Plan, program and oversee cost and schedule execution of planning, design and construction of projects in coordination with functional chiefs of each area to assure that the projects are completed within guidelines and objectives,
- Negotiate and integrate all district functions, customers needs and other agency commitments into a comprehensive Project Management Plan,
- Initiate, manage, administer, and approve plans that translate project objectives into completed functional phases,
- Review and approve funding and manpower estimates to assure that their are sufficient resources to support project objectives,



* Completes regulatory requirements for the state of Wyoming.

Figure 5-1. Cultural Resource Staff

- Review and approve operating plans and approaches, establish overall project priorities, procedures, and short and long range goals,
- Review project criteria, construction progress, and contract modifications and conceives of and/or approves or processes approval of major change,
- Evaluate status of projects against established milestones and objectives by analyzing information presented and directs actions required to maintain established schedules and to assure the attainment of goals and objectives,
- Endorse all products produced in support of the project and has the authority and responsibility to challenge those products,
- Resolve highly difficult technical and administrative project problems, obtaining Project Review Board or supervisory approval, as required,
- Represent the District when dealing with local, state, and municipal authorities, other agencies, Native American tribes, and Congressional Offices for the project and is responsible for furnishing authoritative responses to project questions and issues,
- Participate, with key district personnel, in defining project goals and in preparing a master plan for accomplishment,
- Make major plans and programming decisions that effect long and short range courses of critical action for projects,
- Provide input to the District operating budget related to projects assigned,
- Serve as the authoritative source for decisions and guidance dealing with compromises and changes in project objectives.

These duties are executed for the District Commander as part of the Integrated Process Team.

ii) Staff/Field Archeologists. Some of the responsibilities of the staff/field archeologists are as follows:

- Collect and disseminate technical data from completed projects,
- Compliance with Section 106,
- Conduct surveys in support of the projects,
- Coordinate with institutions concerning artifact curation,
- Coordination with Native American tribes concerning human remains,
- Identify sites for placement on the National Register of Historic Places,
- Monitor archeological sites at operational projects,
- Assist in the preparation of Cultural Resource Management Plans (CRMP),
- Prepare National Park Service Annual Report,
- Respond to inquiries from the public,
- Respond to inquiries from State and Federal agencies,
- Review regulations concerning historic properties management,
- Work with archeological volunteers and site stewards,
- Work with archeologists who request ARPA permits,
- Work on mitigation/preservation techniques for sites,

- Query information on sites,
- Provide site data information to operational elements,
- Coordinate historic properties data with the State Historic Preservation Officer,
- Participate in training of cultural resources field coordinators,
- Develop and maintain the District's historic properties database.

b) Staff Training Plan. To enable the cultural resources staff to successfully execute the program it is important to invest in training. Training ensures that all employees have a base knowledge of the program prior to handling major assignments and it also allows a source for specialized training for those senior individuals involved in the day-to-day execution of the program. Each employee is required to complete an Individual Development Plan (IDP) that in part lists the training that will be required to allow him or her to meet his or her goals and objectives. In October 2001 a multi-year training program was adopted for all new employees in the cultural resource program. The following is an overview of the training required and the associated time table:

i) Initial Requirements. After a new employee starts in the cultural resource program there is a commitment to provide the following information and training needs:

- Provide each new person a list of acronyms.
- Provide a mentor for each new project for a period of 3 years. Mentors will provide sources for technical manuals (IWR, HEC, etc) and brief instruction in the particular techniques.
- Assess computer skills and develop schedule for training to strengthen perceived needs.

ii) First Year Requirements. During the first year in the program it is important for all employees to understand the normal processes that are used to accomplishing our mission. The following information and training opportunities will be pursued:

- "Introduction to Planning" (in first 6 months), a 2-day planning workshop for new planners. Includes planning principles, planning functions, planning responsibilities, and introduction to planning 6-step process.
- "Civil Works Orientation Workshop" (in first 6 months), a 3-day workshop for new planners. Includes the 21 steps to success in the development of a Civil Works project. Includes introduction to the authorization and appropriation process.
- "Planning Principles, Policies and Procedures" (in last 6 months), a 4-day workshop addressing civil works policies and requirements of the Planning Guidance Notebook.
- Participate in at least one public meeting or workshop (in first year).
- Visit at least 4 field sites (in first year).
- Work on a contract action (in first year)
- Attend "Cultural Resources" course

iii) Second Year Requirements. Within two years it is expected that an employee will have completed the following training classes:

- “Plan Formulation Workshop”, a 4-day workshop addressing the entire plan formulation process as it applies to the Corps multi-purpose plan formulation requirements. Covers 4 project purposes of each type of project.
- Attend “Environmental Laws and Regulations” course (bring to Omaha every 2 or 3 years).
- Attend “Environmental Analysis for Water Resources Planning”, a 4-day workshop for apprentice level planners on NEPA process and environmental analysis. Provides detailed discussions on the authorities, procedures, and methods of environmental analysis.
- Attend “Consensus Building for Water Resources” Planning” Course.

iv) Third Year Requirements. Within three years the following course will be taken:

- Attend “Environmental Laws and Regulations” Course (if not attended during second year).
- Attend “Hydrologic Engineering for Planners” Course.
- Attend “Economic Analysis for Water Resources Planning” Course.

v) Other Requirements. To allow employees to be well versed in the program and the many facets that they may be involved in there are some other requirements that must be completed during their first five years within the program.

- With mentor, meet with at least 1 Tribe per quarter.
- Attend training in “working with Indian Tribes” or “Communication with Tribes”.
- Attend at least 1 major scientific conference every 2 years.
- If designated, attend 40-hour HTRW Training. Maintain certification by attending yearly refreshers.

vi) Training Electives. While not requirements, these elective offerings are suggested on an as needed basis.

- Environmental Writing course.
- Conflict Management course
- Managing Multiple Projects
- A-E Contracting
- “Environmental Impact Assessment of Projects” Course.
- “Environmental Impact Assessment for Cultural/Historic Resources” course.

While all personnel that work in the cultural resource area are required to complete an Individual Development Plan (IDP), senior personnel are encouraged to include on their IDP specialized courses that will enhance and enrich their ability to successfully complete projects.

a) GOAL (People). Improve the care of people and maintain or increase their ownership and pride in the program.

i) Objective. Provide access to effective cultural resources training to enhance professional and personal effectiveness.

(1) Develop a one-day training class to promote sensitivity, understanding and appreciation of cultural resource issues. Offer to district personnel as requested.

(2) Promote and encourage participation of district personnel in PROSECT, government agency and private sponsored training.

ii) Objective. Provide a variety of differing assignments that will allow individuals to maximize their creativity and increase their personal knowledge and skills within the program.

(1) Provide opportunities for field archeologists to work in staff positions on a temporary assignment and provide staff archeologists the opportunity to work as a field archeologist on a temporary basis.

iii) Objective. Utilize the virtual team concept to complete workload requirements by promoting a “team” environment among all cultural resource staff regardless of location.

(1) Maintain a workload tracking mechanism that allows multiple locations to update and choose projects to accomplish.

(2) Have a lessons learned process where successful ideas and processes can be reapplied at different locations.

(3) Utilize resources from multiple agencies to accomplish tasks/projects.

b) GOAL (Process). Implement a cohesive strategy to execute, complete, and monitor the cultural resource program.

i) Objective. Complete a Program Management Plan for the cultural resource program. Update the plan on a periodic basis.

(1) Develop a draft Program Management Plan by June 30, 2002. *Completed.*

(2) Complete a Final Program Management Plan by October 1, 2002. *Completed.*

(3) Update Plan annually (Note: This should be completed prior to the start of a new fiscal year and should be done in conjunction with District Strategic Planning activities).

ii) Objective. Establish an Integrated Process Team for Cultural Resources.

(1) Distribute request for interest, respond and establish membership requirements. *Completed.*

(2) Develop, review, approve and sign Charter.

(3) Periodically meet to complete duties as defined in the Charter.

iii) Objective. Establish a Upper Missouri River Basin Cultural Resources Management Team.

(1) Distribute request for interest, respond and establish membership requirements.

(2) Develop, review, approve and sign Charter.

(3) Periodically meet to complete duties as defined in the Charter.

iv) Objective. Establish cultural resource teams/working groups at all Omaha District projects that will be responsible for establishing plans, prioritizing tasks, reviewing documents and other project related duties associated with cultural resource management.

(1) Distribute request for interest, respond, and establish membership requirements.

(2) Develop, review, approve and sign Charter.

(3) Periodically meet to complete duties as defined in the Charter.

v) Objective. Establish specific cultural resource management plans (CRMP) as an integral part of all district projects' Master Plan and Operational Management Plan (OMP).

(1) Distribute Final Lewis and Clark Lake, South Dakota CRMP to all interested parties. *Completed.*

(2) Award, develop and finalize a CRMP for Lake Francis Case Lake, South Dakota. *Completed.*

(3) Award, develop and finalize a CRMP for Lake Oahe, South Dakota. *In-Progress.*

(4) Update CRMPs on a two-year cycle, providing for wide dissemination, review and comment.

vi) Objective. Periodically conduct cultural resource reviews within the district to ensure customer satisfaction.

(1) Meet with the Project Management organization, either face-to-face or by other means to obtain feedback on the performance of the cultural resource staff and program. Complete on a periodic basis, but no less than semi-annually.

(2) Participate in the PRC/PRB process to inform district management of the programs status.

vii) Objective. Conduct regional program reviews throughout the district to update external customers on execution and upcoming opportunities.

(1) Conduct, either as part of another meeting or as a stand-alone meeting, periodic reviews with interested external customers.

(2) Promote and distribute information through various media, including internet web site, public announcements, handouts and telephone contact.

(3) Promote a listening atmosphere, where information can be shared and concerns or comments can be received.

(4) Annually send out a customer survey to determine the areas in which the program is succeeding and areas that the program needs improvement.

viii) Objective. Establish an inventory of categorized Cultural Resource sites on all district-owned lands.

(1) Complete a database of all sites within the Omaha District, including those identified during the completion of the CRMPs.

(2) Begin evaluation of the inventory to determine and place each item in 1 of 4 categories of significance to facilitate nomination to National Register of Historic Places (NRHP).

(3) Assure that the database is updated as new sites are identified and as new information becomes available.

(4) Link the database to GIS systems to provide a visual representation of sites and their location.

ix) Objective. Complete inventory, evaluation, and testing of sites, and nominate all cultural resources that appear eligible for the National Register (NRHP). On an as-funded basis, surveys are completed, or where the survey is very old, surveys are redone. Sites are tested for their eligibility to the National Register of Historic Places. If the information retrieved indicates that the site should be on or eligible to the National Register, the paperwork to nominate the site is submitted, through the chain of command, to the Keeper of the National Register. To meet this objective the following actions are planned:

(1) Complete surveys in accordance with priorities defined in CRMP's.

(2) Evaluate sites for significance, in accordance with CRMP's.

(3) Annually prepare required documentation to nominate 10 sites for nomination to the NR. Continue to do this until all eligible sites are completed.

(4) Develop a scope of work and/or agreement with a group(s) to complete NR paperwork for the District.

c) GOAL (Process). Meet or exceed statutory requirements and stewardship responsibilities regarding all sites, structures, and objects of historical, architectural, archeological, cultural, paleontological, or scientific significance located on District lands or where affected by District actions.

i) Objective. Enforce existing laws (DM1130-2-11) concerning destruction of significant sites.

(1) **Monitoring Plan.** Complete a monitoring plan for all projects within the District. Ensure that the plan includes both an enforcement and surveillance component. Implement a monitoring plan at a minimum of one project/lake per year.

(2) **Enforcement Program.** Project managers/rangers implement enforcement program to monitor the unauthorized use of cultural resources. Issue citations to violators (guidance in DM 1130-2-420, Visitor Assistance Program).

ii) Objective. Mitigate (DM 1130-2-11) affected sites through avoidance, preservation, protection, or data recovery operation (excavation). Complete all mitigation requirements on time and within budget. There are several ways to

mitigate cultural resource sites. Many times we think of just stabilization activities when we discuss mitigation. Avoidance and data recovery are two other ways of mitigating sites. In general it is preferable to preserve a site in place, if at all possible. The District personnel have protected sites using rock riprap, vegetation, and hay bales. Ideally, every significant site would be preserved prior to being impacted. This can be done through avoidance education, recovery of artifacts prior to loss (data recovery) and preservation activities. We will conduct efforts to preserve sites every year. To meet this objective the following actions are planned:

(1) Prioritization List. Maintain and update a site stabilization prioritization list based on impact to the site. Coordinate this list with all interested parties.

(2) Projects. Initiate at least three mitigation projects per year to prevent/stabilize on-going erosion, if funding is available.

(3) Signage. Post warning signs at project recreation areas and boat ramps, as required, to notify the public of cultural resource concerns.

(4) Real Estate Clearance. Coordinate with appropriate personnel to ensure that real estate clearances are completed prior to access to sites.

(5) Coordination. Coordinate with all affected agencies, tribes, landowners prior to implementation of a protection action.

(6) Innovation. Utilize innovative approaches to solve protection issues.

iii) Objective. Increase public awareness and appreciation of cultural resources through education and involvement. In the cultural resources area where there is a vacuum of understanding and appreciation, looting and artifact collection often appear. Therefore it is important to help the public understand the value in preserving cultural resource sites rather than destroying them. This education and awareness process is an active process, not a passive one. It should use various approaches in communicating with the public. It is our desire to first use face-to-face contact as much as possible, as this builds relationships. Other methods such as web sites, written communication, public presentations, involvement in voluntary programs, etc. should be used also. To meet this objective the following actions are planned:

(1) Internet. Update by May 1, 2002 and maintain monthly a web site that contains pertinent information pertaining to the cultural resources program.

(2) Newsletter. Complete an initial newsletter by October 1, 2002 that highlights significant activities of the cultural resources program and promotes stewardship of significant sites.

(3) Outreach. Complete five (5) instances of public outreach through volunteer archeological projects, volunteer site stewards, campground talks, brochures, visitor center displays, Eco-meets, school speaking engagements, Math and Science nights, etc.

(4) Program Exposure. Participate in at least two (2), local, regional or national conferences pertaining to cultural resource topics. Present papers, man booths, and handout literature as appropriate to communicate positive working relationships and activities of the Omaha District and the Corps of Engineers.

iv) Objective. Comply with Native American Graves Protection and Repatriation Act (NAGPRA) requirements in a proactive manner. The NAGPRA requires that federal agencies and federally funded institutions inventory any human remains and funerary objects in their possession. The inventory is preparatory to the repatriation process, in which remains are returned to identified Native American, Alaskan, or Hawaiian descendants. These descendants may be individuals of a direct lineage, or a group sharing a common ancestry. To meet this objective the following actions are planned:

- (1) Complete a Standard Operating Procedure (SOP) for completion of NAGPRA related duties. Implement as required. *Complete July 2001.*
- (2) Submit an itemized budget request to the Curation Center of Expertise for South Dakota NAGPRA requirements annually.
- (3) Maintain a list of curation facilities and inventories for Omaha District properties/artifacts. Update the list periodically.
- (4) Ensure inspection of curation facilities occurs every 3 years.

v) Objective. Complete all Section 106 compliance (civil works planning studies, routine operation & maintenance, real estate actions, 404 permit, etc.) requirements on time and within budget. On a regular basis, District archeologists process Section 106 actions for a variety of civil works studies, O&M activities, Real Estate actions and leases, and Regulatory permits. Every Section 106 action has certain elements in common. First, a file search is done for the area of impact. This can be accomplished by consulting the cultural resources reports if the impact area (legally known as the Area of Potential Effect, or APE) is on Omaha District lands. If the impact area (APE) is outside Omaha District lands, a file search is conducted by contacting the State's archeological records office. The site location and survey information (if any) for the APE is retrieved for the archeologist. The archeologist uses this information to determine if a survey is necessary. The District archeologist's decision (actually, the District position) is sent within a letter, to the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO). The SHPO or THPO agrees or disagrees with that decision. If the District concurs and decides to have a survey conducted, the APE is surveyed by staff archeologists or a professional contract archeologist is hired to do the survey. If a site or sites are found, they are tested to determine their eligibility to the National Register of Historic Places, often through small-scale excavation projects. If the site or sites turn out to be "not significant", the project can proceed. If the site or sites turn out to be "significant" (eligible for the National Register) and the site will be adversely impacted by the proposed project, a mitigation plan is developed by all parties in the form of a Draft Memorandum of Agreement (MOA). This draft MOA is then reviewed by all parties, mutually satisfactory changes are made, and all parties sign a final MOA. These Section 106 actions can vary from simple (such as a Section 106 compliance letter to the SHPO with the results of the file search and the District opinion) to complex (such as a Programmatic Agreement, detailing what sorts of project impacts will trigger what

sorts of Section 106 compliance actions, to be agreed to and signed by many different parties). To meet this objective the following actions are planned:

- (1) Receive and log a request for service for each requirement.
- (2) Receive an agreed upon schedule and budget for each requirement requested.
- (3) Utilize a tracking system for all Section 106 actions.
- (4) Complete an MOA for all significant sites that will be adversely affected by a Federal action.

d) GOAL (Communication). Make coordination, communication and consultation with all interested parties an integral part of cultural resource activities.

i) Objective. Respond to all public and private requests with accurate and timely responses. Communication with the public is essential in maintaining and enhancing the external view of the cultural resource program. External customers deserve prompt responses to inquiries. Responses should be professional in nature, well thought out and coordinated, and focused toward what they want to know. To meet this objective the following actions are planned:

- (1) **Receipt.** Receive requests in a professional and understanding manner by emphasizing effective listening skills. Clarify the request as needed and agree upon a reasonable response date.
- (2) **Response.** Meet and/or beat the agreed upon response due date. If you will not be able to meet the agreed upon schedule, contact the requestor and inform them of the delay.
- (3) **Track.** Utilize a tracking system to assure compliance with suspense and due dates.

ii) Objective. Update, communicate and consult with the appropriate tribes on all cultural resource activities. An official and working Consultation process is needed to be effective in communicating on a government-to-government basis. This outlines the process that will be followed, provides a consistent method for involvement and can be applied to various situations that the program faces. To meet this objective the following actions are planned:

- (1) **Follow District consultation plan.** Ensure that consultation with Tribes is carried out in accordance with the Omaha District Native American consultation plan.
- (2) **Contact.** As a group, meet with all tribes prior to the end of May 2002, to discuss general issues related to the cultural resource program and provide project specific updates and information sharing.
- (3) **Training.** Provide training opportunities for tribal personnel at volunteer projects, on-site, or in a classroom setting.
- (4) **Involvement.** Formally and informally invite tribal members to volunteer projects, bank stabilization activities, field trips to select sites for stabilization, and any other activities that would provide an opportunity for outreach and mutual

understanding. Whenever possible, seek to alleviate any travel hardships through invitational travel orders.

(5) Working Group Teams. Involve appropriate tribal representatives in the cultural resource teams listed under goal b).

iii) Objective. Coordinate all appropriate cultural resource activities with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), and as needed the Advisory Council on Historic Preservation (ACHP). Involvement of appropriate parties from the beginning helps the decision-making process go smoother. It is imperative and required that we involve the SHPO's in all the actions that we take. To do so will allow us to prevent stumbling blocks to success. The involvement of the ACHP is recommended so that we can garner their knowledge and expertise in the issues that we confront. To meet this objective the following actions are planned:

(1) Involvement. Purposefully involve, either verbally or in-person the SHPO and ACHP representatives in all cultural resource activities.

(2) Correspondence. Copy-furnish all appropriate correspondence to the SHPO and ACHP.

(3) Update. Periodically update the SHPO and ACHP of Corps activities through personal contact, phone contact or distribution of newsletter materials.

iv) Objective. Complete and comply with Programmatic Agreements and Memoranda of Agreements. Section 106 requires and recommends MOA's and PA's be utilized between parties to define the requirements each has to successfully complete to implement the Section 106 process. It makes sense that parties proactively approach potential actions rather than react to known events. Therefore we support entering into agreements that further the cooperative working relationship that we need with our customers, other agencies and tribal governments. To meet this objective the following actions are planned:

(1) Develop Agreements. Complete MOA and PA actions where required by law or where it would be mutually beneficial to all parties involved.

(2) Execute Agreements. Comply with the requirements of the agreements. If unable to comply or meet an agreement requirement, other parties to the agreement should be notified immediately. Acceptable resolution should be agreed upon.

(3) Track. Document and track compliance activities associated with the PA and/or MOA.

v) Objectives. Complete an interpretive program at each project that can be used to educate and inform the public. To be able to promote public participation and interest in the cultural resource program, it is essential that they understand who we are, what we do and why we are doing it. The interpretive program is a key mechanism to increasing public understanding of the program. The interpretive process takes a technical topic and simplifies it so the public can relate it to their own experiences. Once the public can understand the program then they can take part in the protection and

preservation of our nations resources. To meet this objective the following actions are planned:

(1) Interpretive Programs. Complete cultural resource interpretive programs as necessary to supplement public education programs. Complete at least one every two years.

(2) Program Development. Utilize an interpretive specialist to complete the program.

vi) Objective. Educate, communicate and participate in Military, Hazardous, Toxic and Radioactive Waste (HTRW), and Work for Others program activities as requested. Two areas of future growth for the cultural resource program exist in the Military and HTRW programs. Unfortunately there appears to be a lack of understanding of the Section 106 process among these groups. Therefore it is important that we take the time to educate the people within these programs on the process and how it can affect their projects. This education will promote the program, proactively handle cultural resource issues and heighten awareness of the importance of preserving our heritage. To meet this objective the following actions are planned:

(1) Military Programs. Use District archeologists' expertise to support military activities, base realignments and closings, new construction activities, new mission assignments, restoration of military quarters, through the appropriate compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

(2) Education. Use effective communication, presentations, etc. to make Military, HTRW and Work for Others personnel aware of NEPA responsibilities, both the endangered species compliance and the Section 106 compliance.

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a Technical Support Procedure

i Definition. Technical support work is any work that is limited to work completed by one archeologist and that is of short duration ranging from a few hours to less than one day. This work is usually in support of a customer needing short, quick, discipline specific technical support, e.g., permit evaluation, cultural site identification, evaluation of field reports, preparation of budgets and schedules, review of studies done by others, etc.

ii Procedure:

(1) Initiation. No quality control plan will be required for these efforts. The customer and/or PM will submit a written request for services (RFS). This can be on paper or contained in an e-mail, but shall not be a verbal request. The RFS will contain, as a minimum, a description of the services required (scope of work), the due date the services or product is required, a budget for the work, and appropriate labor cost code necessary to complete the work. In the case of work funded through bulk funded requirements (i.e., regulatory, project cultural, etc.) the labor cost code shall be the same as the bulk funded cost code. The RFS shall have a tracking slip attached to it by the section secretary or their designee. The tracking slip shall have the due date highlighted for follow-up.

(2) Performance. The archeologist completes the work requested. This is done within the parameters agreed upon between the project manager and archeologist under the previous paragraph. If the archeologist will not be able to complete the effort within the set parameters then they should notify the project manager and determine the appropriate changes.

(3) Completion. The archeologist will send the final technical product to the section secretary. The section secretary shall remove the tracking slip and ensure that the product was completed on schedule. The final product will be forwarded to the PM.

b Procedure For In-House Completed Project

i Definition. An In-House completed project is usually any work that completes inventories, testing and evaluation, impact assessments, mitigation or similar type activities. The work is usually internal to the cultural resource program and is completed by the internal personnel, but is often times more extensive than technical services. Duration of these requirements is more than one day in length. The work usually focuses on producing a document, performing fieldwork, participation in multiple meetings, etc.

ii Procedure:

(1) Project Initiation. The cultural resources program manager will consult with appropriate personnel and determine based on workload and expertise whom should be

assigned as the Project Manager for the project. After receiving notification from the program manager that they have been assigned to the project the PM will complete a PMP.

(2) Product Delivery Team (PDT). The PM will submit a written request for services (RFS) to all the disciplines that are needed to complete the requirement. This should be on paper and will contain, as a minimum, a description of the services required (scope of work), the due date the services or product is required, a budget for the work, and appropriate labor cost code necessary to complete the work. In the case of work funded through bulk funded requirements (i.e., regulatory, project cultural, etc.) the labor cost code shall be the same as the bulk funded cost code. The RFS shall be entered into the Section Workload tracking spreadsheet and submitted to the program manager for updating. This activity establishes the PDT.

(3) Kick-off Meeting. A Kick-Off Meeting will be held to get the investigation or study started. The PM and the PDT members will attend the meeting. The goal of the meeting is to introduce the PDT members and assure all required disciplines are represented, identify and resolve scope, budget, and schedule issues, discuss the customer's expectations, discuss any technical items of concern, select a leader for the Quality Control Team, identify all quality checks and reviews, and select Quality Control Reviewers. A Quality Control Plan that lists the names of the members of the PDT and Review Team and lists the quality reviews to be conducted during each phase of the study development will be completed. The PM will prepare the Quality Control Plan immediately following the Kick-off Meeting. The PM will file in the project file, and distribute copies of the Plan to all PDT members, reviewers, and their supervisors.

(4) Develop Budget and Schedule. Immediately following the Kick-off Meeting, the PM will request that a Budget and Schedule be prepared. The PM requests that each discipline be asked to review their duties for completion of the project and determine what resources they are going to need. Upon acceptance of the disciplines budgets, the PM will either put additional funds in the existing charge number or create a new charge number with sufficient funds for the proposed budget. The PM shall prepare a draft schedule for review by the PDT. The schedule will include all formal submittal requirements and all internal coordination activities. If the PM agrees with the proposed Budget and Schedule, he/she will authorize the effort to begin and distribute the final budget and schedule to all PDT members. The PDT Members are responsible for staying within their Section's budgeted funds shown on the approved Budget and Schedule.

(5) Quality Control Plan (QCP). A quality control plan shall be completed by the PM after completion of the Kick-off meeting and submission of the budget and schedules from all disciplines involved. The quality control plan shall document the process that the project will follow to ensure a high quality document. At a minimum it shall include the project name, location, products and submittals, PDT, QA review team (if required), budget and schedule. This shall be included in the PMP for the project.

(6) Meetings During Study Preparation. During the course of the Study, the PM may call for one or more PDT Meetings to discuss and refine the project QCP, PMP, data needs and/or data gaps to be addressed to meet requirements for the project, required efforts by discipline to fill data needs/gaps (i.e. scope of project), proposed schedule time intervals for project schedule by discipline, and proposed budget needs by discipline.

(7) Quality Control Procedures. At the completion of a submittal, quality reviews as identified in the QCP will be conducted. There are three possible reviews as described below, although all three reviews may or may not be required and the reviews may not occur in the order shown.

a) Peer Review Peer Reviews are necessary when the study is sufficiently complex. The PDT along with their supervisors will decide if a peer review is necessary and determine who will perform the review. If a Peer Review is required, the PM will include this in the project QCP. Peer reviewers will assure that the correct study approach and methods were used, adequate basic data was available, calculations were appropriate, documentation was complete, the appropriate guidance and standards were applied, and the conclusion(s) were reasonable and supportable. Reviewers will document required changes by showing the changes or writing notes on the report, drawings/sketches, or calculations. The Peer Reviewer may also be asked to examine all project material to ensure the product meets all requirements for the project. When required, the PDT will assemble in a conference room at the completion of the study with copies of all their study materials. Each PDT member will be responsible to review their own study material and those portions of other disciplines' material that interface with theirs to make sure the study is coordinated. PDT members will document required changes by showing the changes or writing notes on the study material.

b) Quality Control Review (QCR). Quality Control Reviews will be done at the Final Draft phase or at other designated intermediate phase. The PM will document requirements for all QCRs in the Quality Control Plan. The PM will ensure that the appropriate number of copies of the study are reproduced for the QCR. The PM will distribute to the Quality Reviewer of each discipline (Review Team) a copy of their discipline to review. Each reviewer will review the material with special attention to their discipline's input to ensure that the approach, analysis, conclusions, and recommendations are adequate. Reviewers will document required changes by showing the changes or writing notes on the drawings/sketches, write-up, or body of the report. At the completion of this review, each reviewer will compile comments and forward the comments to the PM, who will in turn provide a copy to each discipline represented. The PM will also keep a copy of the completed comments to file it in their project file.

(8) Closeout Report. Completion of a project is an important part of the process. The PM shall complete a Closeout Report at the end of the project. This report can be as simple as a checklist of important closeout items. Closure of project

files, completion of financial data requirements, and lessons learned are the three basic requirements in a closeout report. Each PDT member will be required to add any lessons learned to the DrChecks system. DrChecks is an Internet based design review comments system with a Corporate Lessons Learned (CLL) system.

c Procedure for Contract Completed Project.

i Definition. There are many types of work that are performed by contractors for the cultural resources program. These can range from fieldwork to report preparation. Scientific Investigation or Study work is any work that completes inventories, testing and evaluation, impact assessments, or similar type activities. The work is usually internal to the cultural resource program and is completed by the internal personnel.

ii Procedure:

(1) Project Initiation. The cultural resources program manager will consult with appropriate personnel and determine based on workload and expertise who should be assigned as the Project Manager for the project. After receiving notification from the program manager that they have been assigned to the project the PM will complete a PMP.

(2) Product Delivery Team (PDT). The PM will submit a written request for services (RFS) to all the disciplines that are needed to complete the requirement. This should be on paper and will contain, as a minimum, a description of the services required (scope of work), the due date the services or product is required, a budget for the work, and appropriate labor cost code necessary to complete the work. In the case of work funded through bulk funded requirements (i.e., regulatory, project cultural, etc.) the labor cost code shall be the same as the bulk funded cost code. The RFS shall be entered into the Section Workload tracking spreadsheet and submitted to the program manager for updating. This activity establishes the PDT.

(3) Contract Acquisition. Since the requirement has been determined by the Project Review Board to be a contracted effort the PM is required to complete a scope of work, government cost estimate, proposed schedule, and set up contracting work items.

a) Scope of Work. Prepare a scope of services of the work needed.

b) Government Estimate. Prepare the Government Estimate estimating the cost of the work requested. This estimate shall be prepared prior to the receipt of the contractor's proposal. It shall be reviewed and approved by the Cultural Resources Section chief prior to submission to Contracting Division.

c) Schedule. The PM develops a schedule that includes all the submittal requirements, meeting dates, and other critical milestone activities. At a minimum the

schedule will be in tabular form and easy to follow. The schedule can be completed using approved computer software.

d) Negotiations. The PM, technical specialists and the contracting representative will negotiate with the contractor the specific requirements of the scope of services. Procedures outlined in the Federal Acquisition Regulations (FAR) shall be followed.

e) Revised Scope, Government Estimate, Schedule. The PM, if required, shall revise and resubmit to the contracting representative the three above mentioned documents. This shall be done concurrent with the contractor submitting their final proposal.

(4) Quality Control/Assurance Procedures. The Contractor will implement their approved quality control procedures during the course of project completion. Their quality control procedures should be referenced in their proposal. The PM will arrange with the PDT to perform Quality Assurance of the contractor's work. After review is complete all comments will be compiled by the PM and sent under cover letter to the contractor for their incorporation and response. This process shall be completed for all submittals required by the scope of services.

(5) Contractor Responsibility. The policy and procedures to be followed for Contractor Responsibility cases are described in Omaha District Memorandum OM 1180-1-6.

(6) Closeout Report. Completion of a project is an important part of the process. The PM shall complete a Closeout Report at the end of the project. This report can be as simple as a checklist of important closeout items. Closure of project files, completion of financial data requirements, and lessons learned are the three basic requirements in a closeout report. Each PDT member will be required to add any lessons learned to the DrChecks system. DrChecks is an Internet based design review comments system with a Corporate Lessons Learned (CLL) system.

a) **Authorities and Policies.** The cultural resources policy of the Omaha District is to preserve and protect significant cultural resources in a spirit of stewardship for the nation. As mentioned previously, inherent in this policy is the responsibility for locating, identifying, and evaluating cultural resources for their eligibility to the National Register of Historic Places. Once these cultural resources have been determined eligible for the National Register of Historic Places, it is our responsibility to preserve them in perpetuity or to mitigate them if they cannot be preserved. It is our goal to properly care for significant sites, stabilizing those sites threatened by erosion, mitigating those sites where stabilization is not an option, encouraging and enabling adaptive reuse of historic structures, and showcasing the historic and prehistoric sites on District lands, as appropriate. It is understood that laws and regulations are the primary elements that shape policy. Therefore this section stipulates the laws and regulations that pertain to cultural resources and provides a brief synopsis of the law or regulation. The laws and regulations are broken down into four sections; Public Law (including Uniform Standard Code and Code of Federal Regulation references), Executive Orders, Other Federal Guidance, and Corps of Engineers Regulations.

i) Public Law.

(1) Antiquities Act of 1906 – Public Law (P.L.) 59-209 16 Uniform Standard Code (U.S.C.) 431-433. Provides for protection of historic and prehistoric ruins and objects of antiquity, including paleontological resources on land owned or controlled by the Federal Government. The Act makes it a Federal offense to excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States. Requires that permits be issued to conduct archeological work on Federal land. Authorizes the President to declare historic and prehistoric landmarks as national monuments. Federal agencies are permitted to transfer objects of antiquity to properly qualified institutions. There are no compliance requirements for the Corps of Engineers under this Act. The permit required under the Archeological Resources Protection Act of 1979 has replaced the Antiquities Permit.

(2) Archeological Resources Protection Act of 1979, as amended - 16 U.S.C. 470 aa-mm. This Act establishes a method for Federal land managers to issue permits to conduct archeological work on Federal land, details who has custody of archaeological resources, establishes prohibited acts and criminal penalties, describes unauthorized activities, prohibits trafficking in archeological resources, provides for confidentiality of the nature and location of archeological resources, and provides Federal land managers with rules for the implementation of this Act (See also EC 405-1-71; Appendix I). The Omaha District is empowered to issue ARPA permits to state, other agency, and institutional archeologists who plan to conduct archeological investigations on Corps owned lands. This includes lands that are leased or permitted. An application form must accompany permit requests and a written proposal that provides the documentation specified in 32 CFR Parts 229.6 and 229.8. ARPA permits are obtained through the District Real Estate Division in coordination with other District elements in order to determine the availability of the land to be permitted. It is also

incumbent on Real Estate to identify and consult with any affected Native American tribes. ARPA permits are not required by Corps personnel acting in an official capacity, or by Corps contractors pursuant to contract requirements. The District is also able to more effectively prosecute apprehended looters under this act since criminal penalties are set forth. Criminal punishments under this act are similar in nature to the seizure procedures for drug trafficking violations. Besides the artifacts themselves, all the equipment and transportation means to get to the artifacts can also be seized; the screens, shovels, boats, trailers, and vehicles are subject to seizure under this act.

(3) Historic Sites Act of 1935 - P.L. 74-292 16 U.S.C. 461-467. Declared it a national policy to preserve for public use cultural resources of national significance and delegated primary responsibility to the Secretary of the Interior. The act authorizes interagency efforts to preserve historic resources, and it authorizes surveys of historic and archeological sites to determine which are significant. It also provides for restoration, reconstruction, rehabilitation, preservation, and maintenance of nationally significant historic and prehistoric properties. The Secretary of the Interior is authorized to conduct surveys and studies, collect information, and purchase significant historic properties, and to restore, preserve, maintain, and rehabilitate structures and sites. There are no specific compliance requirements stated in this act.

(4) The Reservoir Salvage Act of 1960 - P.S. 86-523 16 U.S.C. 469-469c, as amended by the Archaeological and Historic Preservation Act of 1974 - P.L. 93-291 16 U.S.C. 469. The intent of this Act is to make Federal actions responsive to the damage they will cause to scientific, prehistoric, historical and archeological resources. The Act provides a mechanism through which resources can be salvaged after a decision has been made to proceed with a project. Federal agencies are directed to notify the Secretary of the Interior (through State Historical Preservation Officers [SHPO's]) when a Federal project or activity may cause irreparable loss or destruction of significant resources or data. The act established a limit of 1 percent of total Federal appropriation for a project for agencies other than the Interior for mitigation of cultural resources, and identifies this as a federal cost. The one-percent limit on expenditures for cultural resources has since been rescinded. Compliance requirements are limited to notifying the Secretary of the Interior when a project will damage cultural resources. This is generally accomplished through the Section 106/110 and NEPA processes, but is not part of this Act.

(5) 16 U.S.C. 469-469c, Archeological and Historic Preservation Act of 1974. This Act is an amendment to the Reservoir Salvage Act. It states that when the Federal agency is provided with information that any alteration of the terrain caused as a result of any Federal construction project or Federally licensed activity or program will cause damage to a significant scientific, prehistoric, historic or archeological data, such agency shall notify the Secretary (*of the Interior*), in writing, concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or

activity, undertake such activities. Any time that ground-disturbing activities are anticipated, the Omaha District shall notify the Secretary of the Interior (in most cases, their designated representative, the SHPO) if the proposed action will cause damage to a significant site. The District can request that the Secretary of the Interior perform the recovery, protection, and preservation of the data, besides conducting the preliminary survey, but more often, project funds are used by the District to accomplish this task. This law is also called the Moss-Bennet Bill.

(6) P.L. 102-575, National Historic Preservation Act of 1966, as amended through 1992. The Act establishes preservation as a national policy and directs the Federal government to provide leadership in preserving, restoring and maintaining the historic and cultural environment of the nation. The Act authorizes the Secretary of the Interior to maintain a National Register of Historic Places, and establishes the Advisory Council on Historic Preservation (ACHP).

The 1980 amendments established guidelines for significant properties, curation of artifacts, data documentation of historic properties and preservation of Federally owned historic sites; required designation of a Preservation Officer in each Federal Agency; authorized the inclusion of historic preservation costs in project planning costs, and authorized the withholding of sensitive data on historic properties when necessary. Federal agencies are directed to maintain historic properties in ways that consider cultural values.

Section 106 directs Federal agencies to take into account the effect of a Federal undertaking on any district site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historical Places. Federal agencies must also provide the ACHP a reasonable opportunity to comment on each Federal undertaking.

Section 110 requires Federal agencies to assume responsibility for preservation of historic properties that are owned and controlled by agencies, and they are required to establish a program to locate, inventory and nominate all properties under the agencies ownership or control that are eligible for inclusion on the National Register. In the interim, agencies are to exercise caution to assure that significant properties are not inadvertently transferred, sold, demolished, substantially altered or allowed to deteriorate.

The Corps must be able to document compliance with the Act by including relevant coordination or consultation correspondence, study results, agency views and comments, and if required, mitigation plans in Corps project reports and NEPA documents. The Corps must prepare historic preservation plans for projects under its jurisdiction that discuss survey and evaluation strategies, costs, and schedules, and that establish management objectives for historic properties. The Act requires Federal agencies to develop and implement professional qualification standards for Federal employees and contractors. The Corps must ensure that tribal values are taken into account to the extent feasible. Native American groups are authorized to establish their

own culturally specific criteria of significance and develop their own Section 106 compliance process for resources on lands under their jurisdiction.

(7) 36 CFR Part 800, Protection of Historic and Cultural Properties. This regulation provides guidance on how to determine what kind of effect a Federal undertaking will have on a significant historic property. Once the effect is determined by an Agency official, in this case the Omaha District, in consultation with the SHPO or the Tribal Historic Preservation Officer (THPO), steps are taken to avoid or mitigate the significant historic property. District consultation with SHPO's, THPO's, and the ACHP are either recommended and/or required. This law was updated in 1999.

(8) 36 CFR 78, Waiver of Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act. Authorizes the Secretary of the Interior to "promulgate regulations under which the requirements in Section 110 may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security."

(9) 36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections. This regulation establishes definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains. It addresses the management and preservation of collections, qualifications for curators, standards for curation facilities, funding for curatorial services, use and loan of collections, and periodic inspections and inventories. There are also templates in the appendices for an example of a deed or gift, a loan agreement, and a curation agreement. The District is responsible for having District artifacts curated at a federally approved repository, staffed by qualified curators. Any loans by these repositories require District review. Regular collection inspections and curation agreement reviews are also a District responsibility.

(10) 36 CFR Part 60 National Register of Historic Places. Nominations by States and Federal Agencies published in the Federal Register Vol. 41, No. 28, 10 February 1976 and 36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register. These two regulations establish the method by which States and Federal Agencies can nominate sites to the National Register of Historic Places or have them "Determined Eligible", a similar, but more expedient process for declaring that a site, building, structure, or object is significant and worthy of mitigation. In these regulations, either the State or the Federal Agency can nominate sites or determine them eligible for the National Register. Nominating criteria are set forth, as well as directions on how to complete the forms. The District is responsible for nominating sites on District lands that meet the National Register criteria.

(11) 42 U.S.C. 1996 and 1996a, American Indian Religious Freedom Act of 1978. On and after August 11, 1978, "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession

of sacred objects, and the freedom to worship through ceremonials and traditional rites.” Under this law, the Omaha District must not limit access to religious sites, the possession and use of sacred objects, and the freedom to worship through special ceremonies and traditional rites. Federal agencies must make reasonable efforts to locate and coordinate with organizations and communities of groups covered by the act to insure that religious rights are accommodated during project planning, construction, and operation. Efforts must be documented in Corps project reports and NEPA documents.

(12) P.L. 100-298, Abandoned Shipwreck Act of 1987. Authorizes the United States to assert ownership over any abandoned shipwreck in State waters and submerged lands (lands beneath navigable waters). It provides guidelines for the designation of abandoned shipwrecks as nationally designated parks, areas, or sanctuaries. Federal protection is provided to any shipwreck that meets criteria for eligibility for inclusion in the National Register. Disposal of dredged or other material on or in the near vicinity of such wrecks is prohibited.

Corps reports and NEPA documents must show evidence of consultation with the SHPO's and the ACHP for significance and impact determinations and agreements about mitigation stipulations. Submerged resources are considered by the Corps under Section 106 of the National Historic Preservation Act (NHPA) and implementing regulations.

(13) 25 U.S.C. 3001-3013, Native American Graves Protection and Repatriation Act of 1990. This Act directs the Federal government to determine the cultural affiliation or lineal descendants to human skeletal remains from Federal land, and repatriate those remains, along with any grave goods or other items of cultural patrimony. It also provides a mechanism for notifying the various tribes of the items within the Federal collections, through announcements in the Federal Register. The Act also provides mechanisms for the intentional or unintentional exhumation of human skeletal remains. Under this Act, the Omaha District must conduct an inventory of collections of human remains and associated funerary items under their jurisdiction by the end of 1995 and consult with tribal governments regarding repatriation of existing collections. In cases where unanticipated covered resources are encountered during construction, Corps must cease undertakings or activities, in whole or in part, for at least 30 days, and make a reasonable effort to protect the items discovered.

(14) 43 CFR Part 10, Native American Graves Protection and Repatriation Act. This rule establishes definitions and procedures for lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to carry out the Native American Graves Protection Act, the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony. Besides the requirements in the Act itself, the rule provides guidelines for consultation, examples for notification in the Federal Register, lineal descent and cultural affiliation determinations, repatriation limitations and remedies, and dispute resolution.

The District is responsible for sending notifications to the National Park Service to be printed in the Federal Register and for consultation with the culturally affiliated tribe(s) with respect to the repatriation. The District is then responsible for repatriating the human remains, funerary objects, sacred objects, and objects of cultural patrimony.

(15) 18 U.S.C. 641, Theft of Government Property. This Act states that it is illegal to steal government property. The District is responsible for assuring that Federal property is not stolen.

(16) 36 CFR Part 65, National Historic Landmarks Program. This regulation sets forth the criteria for especially significant sites, elevated in importance from National Register or eligible sites. The National Historic Landmarks program is designed to highlight a type of site from each time period or phase that is particularly significant to the Nation's history or prehistory. It gives the Secretary of the Interior the responsibility for maintaining a database on the condition of each landmark, along with the responsibility for making recommendations when a landmark is endangered or threatened. The Omaha District is responsible for the preservation of the Landmark sites on District lands.

(17) 43 CFR 3, Preservation of American Antiquities. Designates specific agency jurisdictions over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objectives of antiquity. Also provides conditions for issuing permits for excavation.

(18) 36 CFR Part 61, Procedures for Approved State and Local Government Historic Preservation Programs. This regulation sets forth the guidelines for setting up state and local government historic preservation programs under the approval process of the Department of the Interior. Although the District does not have any specific responsibilities under this CFR, it does define the state and local preservation programs. The District works extensively with the state historic preservation staff under Section 106 of the National Historic Preservation Act of 1966, as amended.

(19) 43 CFR Part 7, Protection of Archeological Resources. The regulations in this part implement provisions of the Archeological Resources Protection Act of 1979 by establishing uniform definitions and uniform procedures to be followed in providing protection for archeological resources located on public lands and Indian lands in the United States. The four procedures detailed in this part are permits, civil penalties, provisions for preservation of collections and data, and provisions for ensuring confidentiality of information.

(20) 33 CFR 327, Part C, Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers. This rule provides protection for historic properties and public properties. This sub-part of the Regulatory Permit guidance runs counter to 36 CFR Part 800, the ACHP guidance for Section 106 of NHPA. It is in the District's best interest to follow 36 CFR Part 800, rather than the un-approved Corps counterpart regulation.

ii) Executive Orders.

(1) Executive Order 13007, Indian Sacred Sites. In managing Federal lands, each agency shall accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and avoid adversely affecting the physical integrity of such sacred sites, including maintaining confidentiality of the location of these sacred sites. Under this Executive Order, the Omaha District must accommodate access to and ceremonial use of Indian sacred sites by religious practitioners, keep the locations confidential, and avoid damaging or disturbing these sites.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment. This EO directs the Federal Government to provide leadership in preserving, restoring and maintaining the historic and cultural environment of the nation. It also directs the heads of all Federal agencies to have all the sites on their lands located, inventoried, and nominated to the National Register of Historic Places by July 1, 1973. Caution is to be exercised in the interim period. This Executive Order requires the Omaha District to inventory District lands, nominate sites to the National Register of Historic Places by July 1, 1973, to exercise caution in the interim, and to provide leadership in preserving, restoring and maintaining the historic and cultural environment.

iii) Other Federal Guidance

(1) Dredging Guidance Letter No. 89-01, Policy and Procedures for the Conduct of Underwater Historic Resource Surveys for Maintenance Dredging and Disposal Activities. This guidance letter details the policy and procedures for underwater dredging as it applies to historic resources.

(2) Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act. Section 110 of the NHPA requires Federal agencies, in this case, the Omaha District, to assume responsibility for preservation, use historic properties, undertake preservation activities, locate, inventory, and nominate properties to the National Register, document historic properties adversely affected by Federal undertakings, designate a Federal Preservation Officer at the Washington level, in the case of the Corps, and train this person, carry out agency (e.g. Corps of Engineers) programs and projects consistent with the Act, review and approve plans to transfer surplus property to the Secretary, use Federal planning and actions to minimize harm to National Historic Landmarks affected by agency undertakings, establish eligible project costs, create a preservation awards program, continue to fulfill the requirement to comply with the National Environmental Policy Act, waive Section 110 during a national emergency or disaster, and protect the significant historic properties on their lands. Basically, this law states that the District is responsible for the preservation and protection of significant historic properties on District lands.

(3) The Secretary of Interior's Standards for Architectural and Engineering Documentation. This set of standards provides the guidelines for adequately documenting architectural and engineering structures that are going to be impacted by a Federal or Federally permitted or licensed undertaking. For example, should a proposed District regulatory permit activity involve tearing down a historic bridge, this set of standards provides the minimum requirements that must be met when creating the archival documentation for the bridge.

(4) The Secretary of the Interior's Proposed Historic Preservation Professional Qualification Standards. These proposed standards (48 FR (190) 44739) describe the recommended levels of education, experience, or a combination thereof for the compliance and historic preservation series. This set of standards provides the Omaha District with guidelines for hiring qualified staff and qualified contractors.

iv) Engineering Regulations.

(1) ER 1130-2-540, 15 Nov 96, Chapter 6, Cultural Resources Stewardship. This Engineering Regulation (ER) establishes the policy for the management and protection of cultural resources at operating civil works water resources projects for which the Corps of Engineers is responsible. It requires that the Corps Mandatory Center of Expertise (MCX) for Curation and Management of Archaeological Collections at St. Louis District manage Corps-wide curation needs assessments and design services for the curation of archaeological collections. Data and material from historic properties included in or eligible for the National Register of Historic Places that could be impacted by civil works undertakings will be investigated, evaluated, recovered and preserved. District commanders shall ensure that collections are available for scientific and educational uses by qualified professionals. Collections may also be loaned for religious uses by interested groups with a demonstrated affiliation to the materials in the collection. Requires that human skeletal materials not be placed on display or exhibited for public viewing in any fashion. Requires consultation with affected tribes, groups, or individuals regarding appropriate action for project effect upon sacred sites important to the practice of traditional Native American religion. Commanders are to ensure that Native Americans who are invited to participate by the Corps in consultation proceedings receive appropriate compensation for their activities. Provides that commanders ensure that a Cultural Resources Management Plan is developed for Corps projects. Requires that District Commanders (upon availability of funds) accomplish an inventory of historic properties and site evaluation at each water resource project. Requires that historic properties on fee owned lands be managed and maintained in a way that considers the preservation of archaeological, architectural and cultural values.

Historical preservation is an equal and integral component of resource management at operating civil works projects.

The ER also provides that commanders restrict access to associated records containing information related to nature, location, or character of a prehistoric or historic resource. The policy also states that, although not subject to civil or criminal penalties of ARPA, the collection of arrowheads or other artifacts from the surface of the land for private purposes without a permit shall be prohibited. Violators of protected properties shall be prosecuted.

(2) EP 1130-2-540, Chapter 6, Cultural Resources Management. This EP establishes guidance for the management of collecting, preserving and curating archeological and historic materials at Corps projects, as well as establishing a Historic Preservation Program for construction, operations, and maintenance activities at these locations. States that in carrying out the provisions of the law and policy, the Corps investigates, evaluates, and recovers data and material from historic properties that could be impacted by an undertaking. Collection use is subject to such terms as are necessary to protect and preserve the condition, integrity, and research potential of the collection. Collection users will be required to adhere to all rules established by the collections management center to protect the collection, and a written agreement is required. Provides methods for securing collections management services and/or transferring responsibility to another federal agency. Requires commanders to conduct and assessment of existing collections that are owned or controlled by the District, and a report to be prepared. Provides specific standards for collection management centers. Requires commanders to conduct an on-site inspection of collection management centers at least once every three years. Excludes paleontological resources from compliance with historic properties legislation, and cites them as being protected under other laws. Provides guidance for preparation of Feature Design Memoranda for major modification or new construction at civil works projects. Provides guidance for sites discovered during construction. Provides criteria for establishing historic program priorities. Provides guidance for preparation of Historic Properties Management Plans.

(3) ER 1105-2-50, draft 36 CFR 66, Appendix B and ACHP, Treatment of Archeological Properties: A Handbook. This ER provides standards and requirements for a variety of mitigation alternatives for significant sites.

(4) ER 1130-2-438 (Oct. 26, 1987) - Project Construction and Operation Historic Preservation Program. This regulation establishes the Historic Preservation Program for the Department of the Army, U.S. Corps of Engineers at Civil Works projects. The program provides overall guidance for construction, operation, and maintenance activities in relation to historic properties. The regulation states that these properties are to be given “just and equal” consideration along with other resources in the preparation of Master and Operational Plans. It furthermore directs all Districts to complete and inventory all project lands, and to mitigate adverse effects to significant cultural resources that result from Corps undertakings. It details actions and procedures to be followed whenever historic resources are discovered during a Corps undertaking, or whenever federally owned lands are exsessed. Importantly, ER 1130-2-

438 mandates the development of a Historic Properties Management Plan (HPMP) for each operational Corps project.

b) Memoranda of Agreement, Programmatic Agreements, and Curation Agreements. There are situations where additional agreements are authorized to clarify responsibilities, procedures, processes or requirements of the existing laws and regulations. The Omaha District has utilized the agreement mechanism to effectively implement our cultural resource responsibilities. Specifically there are Memoranda of Agreements (MOA), Programmatic Agreements (PA), and Curation Agreements (CA) that the District has implemented. Current versions of formal agreements that have been developed, signed and legally bind the District to specific cultural resource activities listed in the agreement are kept at the district offices. Contact the Cultural Resources Program Manager for a copy of these agreements.

13 AUG 2001

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Standard Operating Procedure for Discovery of Human Skeletal Remains

1. Enclosed is the Standard Operating Procedure (SOP) for Response Procedures for Discovery of Human Skeletal Remains. This SOP has been coordinated with all levels of Operations Division (including Emergency Management), Project Management Division (PM-AE), Dave Vader, and Office of Counsel. Members of the North Dakota Intertribal Reinternment Committee (NDIRC) were provided the Draft SOP and allowed one month to comment. Although no comments were received during that timeframe, if we receive any comments in the future, we will make the necessary adjustments under separate cover.

2. The procedures outlined in the SOP are effective immediately. If you have any questions, you may contact Kelly Crane at (402) 221-4410.

Signed
Mark E. Tillotson

Encl

MARK E. TILLOTSON
Colonel, EN
Commanding

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**RESPONSE PROCEDURES FOR
DISCOVERY OF HUMAN SKELETAL REMAINS
STANDARD OPERATIONS PROCEDURE
AUGUST 2001**

1. PURPOSE: The purpose of this Standard Operating Procedure (SOP) is to provide guidance to assure respectful and responsive treatment of human skeletal remains on Omaha District Corps of Engineers (Corps) project lands. This document provides guidance for the reporting, recording, and disposition of human remains at a practical level for Corps personnel.

2. POLICY: It is the policy of the Corps of Engineers to treat human skeletal remains respectfully and responsively in consultation with affiliated tribes in accordance with the North Dakota Intertribal Reinterment Committee (NDIRC) Memorandum of Agreement (MOA), Native American Graves Protection and Repatriation Act (NAGPRA), and applicable federal, tribal, state and local laws.

3. APPLICABILITY: This policy is applicable to Civil Works Water Resource Development Projects within the Omaha District.

4. REFERENCES:

- a. 43 CFR Part 10: Native American Graves Protection and Repatriation Act (NAGPRA) Implementing Regulations Synopsis (Appendix A).
- b. Memorandum of Agreement (MOA) between Corps of Engineers, North Dakota Tribes, and the North Dakota Intertribal Reinterment Committee (NDIRC) (Appendix B).
- c. CENWO-OD-EM Notification SOP for Human Remains Found on Project Lands (Appendix C).
 - (1) Flow Chart
 - (2) Discovery Information Sheet
 - (3) NDIRC and other Tribal Points of Contact

5. PROCEDURE:

a. Discovery of Human Skeletal Remains

(1) Discovery by a Corps of Engineers Employee. Immediate reporting is mandatory. **Call the Emergency Operations Center (EOC) in Omaha, Nebraska at (402) 221-4148 immediately.** The EOC will make the remaining required calls. Go to paragraph B below.

(2) Discovery by a visitor. If a visitor to the project reports the discovery of skeletal remains:

- (a) Tell the visitor not to touch or disturb the remains.

- (b) Ask the visitor for information such as name, address, and phone number for future reference.
- (c) Caution the visitor not to move the remains or disturb the site.
- (d) Ask the visitor to give a detailed description of how to get to the site.
- (e) Thank the visitor and ask them to keep the site information confidential.
- (f) **Report immediately to the EOC at (402) 221-4148.**
- (g) Find or attempt to find the site and identify on a map.
- (h) Once site is located, follow the remaining instructions as if the discovery were made by a Corps employee.
- (i) Follow up with a thank you note to the visitor.
- (j) Go to paragraph B below.

(3) Visitor brings remains to you. If a visitor to the project brings skeletal remains to you:

- (a) Thank them, and obtain their name, address, and phone number.
- (b) Obtain information on source of remains.
- (c) If from a site, get location, etc.
- (d) Advise the visitor to not touch the bones in the future.
- (e) Explain the importance of leaving the remains in place because of cultural resource site protection, burials, federal property, possible crime scenes, etc.
- (f) **Report immediately to the EOC (402) 221-4148.**
- (g) Go to paragraph B below.

B. Preliminary Site Assessment.

1. Note the location of the site using Global Positioning Systems (GPS) reading if available. If not available, mark location on a United States Geological Service (USGS) quad map, recorded to nearest quarter-quarter section, including county, township, and range. Write a detailed description of how to get to the site. If camera is available, take pictures of the remains (try to include permanent landmarks when possible). Photos will be used only for in-house documentation. No photos will be given to outside sources, especially the media.

2. Do not remove or disturb the bones unless they are in immediate danger of being disturbed by animals, vandals, or sloughing banks until a tribal representative or an NDIRC member has been contacted. Leave the bones as you found them, unless threat to them is imminent. Contact the appropriate archeologist: Rick Harnois (South Dakota) 605-224-5862 ext 3269 or Steve Gilbert (North Dakota) 701-654-7411 ext 230, and explain the situation. Follow their instructions.

3. Once human remains are confirmed, and as long as they are not considered to be part of a crime scene, designated Omaha District personnel will consult with tribal members and jointly they will decide how to handle the situation.

4. If the remains are determined by a Corps archeologist to be of, or direct lineal descendants of, any signatory of the North Dakota Intertribal Reinterment Committee (NDIRC), initiate steps listed in the NDIRC Memorandum of Agreement (MOA).

D. Federal Activity Responsible for Discovery

If a Federal activity results in the inadvertent discovery of human remains, the activity should cease for a maximum of 30 days and the remains should be secured and protected, "including, as appropriate stabilization or covering."

E. Excavation or Removal of Remains.

NAGPRA [43 CFR 10.4 (d)(v)] states that, if the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in 10.3 (b) of NAGPRA. Contact your archeologist for further guidance and instructions.

Appendix A

NAGPRA Implementing Regulations (Synopsis)

1. Once human remains are confirmed, but no later than three days after the notification to the Operations Manager, the proper tribal representative should be contacted by phone and invited to examine the site. [43 CFR §10.4(d)(iii)] requires notification within three days to affiliated Tribal members.
2. NAGPRA [43 CFR §10.4(c)] requires that the federal activity that resulted in the inadvertent discovery of human remains should cease for a maximum of 30 days and the remains should be secured and protected, "including, as appropriate stabilization or covering." [43 CFR §10.4(d)(ii)]
3. Consultation: The following activities involve consultation with interested parties. The District will have the lead on this. Generally, remains should not be turned over to a Tribal representative until proper consultation has been conducted. This includes consultation required as a result of the discovery of the remains; consultation prior to the intentional excavation and/or removal of the remains and the consultation required before the remains may be turned over to the entity determined to have the paramount right to custody of the remains.
4. NAGPRA [43 CFR §10.4(d)(iv)] requires that the Federal Agency with jurisdiction over the site should consult with potentially interested parties as dictated by 43 CFR§10.5.
5. NAGPRA [43 CFR(d)(v)] states that, if the remains are to be excavated or removed, the requirements of §10.3(b) be followed.
6. NAGPRA [43 CFR §10.4 (d)(vi)] requires that final disposition of the remains take place as set forth in §10.6 which explains Custody issues.

Appendix B

BACKGROUND AND PURPOSE STATEMENT

From a consideration of the mandate issued by the Native American Graves Protection and Repatriation Act, it is clear that, in the event that an unmarked burial is opened or otherwise endangered on Federal lands managed by the Omaha District, U.S. Army Corps of Engineers (Omaha District) has a responsibility to notify and consult with those tribes whose ancestors are interred in unmarked burials found on lands administered by the Omaha District, but which were once the aboriginal homelands of an indigenous nation or tribe. Further, from a consideration of a series of meetings held with the North Dakota Intertribal Reinterment Committee (NDIRC), it is clear that tribal governments in North Dakota, through their representatives on the NDIRC, have repeatedly expressed their strong desire to protect the contents of their ancestor's graves from any manner of disturbance. When disturbance cannot be avoided, however, the tribes have been very clear in calling for procedures in the disposition of these burials that protect the deceased. For these purposes, the following procedures shall be carried out by the Omaha District and the NDIRC when unmarked human burials are opened or otherwise disturbed on lands under its control.

MEMORANDUM OF AGREEMENT

BETWEEN THE DEVIL'S LAKE SIOUX TRIBE, STANDING ROCK SIOUX TRIBE, THREE AFFILIATED TRIBES, AND TURTLE MOUNTAIN BAND OF CHIPPEWA, AS REPRESENTED BY THE NORTH DAKOTA INTERTRIBAL REINTERMENT COMMITTEE AND THE UNITED STATES ARMY CORPS OF ENGINEERS, OMAHA DISTRICT CONCERNING THE PROTECTION, PRESERVATION, AND DISPOSITION OF UNMARKED HUMAN BURIALS, BURIAL MOUNDS, AND CEMETERIES LOCATED ON OMAHA DISTRICT LANDS IN THE ABORIGINAL HOMELANDS OF THE MEMBER TRIBES OF THE NDIRC, AS PROVIDED FOR BY THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.

WHEREAS, the U.S. Army Corps of Engineers, Omaha District (hereinafter referred to as the Omaha District), has project operations responsibilities over lands once occupied by the aforementioned tribes that contain human interments now located along Lakes Bowman/Haley, Oahe, Sakakawea, and Pipestem Reservoir; and

WHEREAS, the Omaha District has custodial responsibility over burials, and periodically finds itself gaining possession of human remains eroded or collected from the reservoirs of North Dakota; and

WHEREAS, the tribes represented by the signatories hereto now occupy tribal lands in North Dakota and were aboriginal occupants of lands which, in part, now make up the State of North Dakota and other parts of the Missouri River Basin, as depicted on the map included as Appendix 1, do claim and assert the right of possession and control of Native American human remains and associated burial goods on lands managed by the Omaha District in North Dakota in accordance with Section 3a(2)(C) of the Native American Graves Protection and Repatriation Act (NAGPRA), and

WHEREAS, the tribal governments in North Dakota, through their representatives on the North Dakota Intertribal Reinterment Committee (NDIRC), have expressed their strong desire to protect the contents of their ancestors' graves from any manner of disturbance; and

WHEREAS, the Omaha District has consulted with all of the aforementioned parties and has agreed that certain actions ensuring the proper treatment of any Native American human remains and burial goods shall require uniform procedures in order to comply with the position of the NDIRC and the NAGPRA.

NOW THEREFORE, the Omaha District and the Devil's Lake Sioux Tribe, the Standing Rock Sioux Tribe, Three Affiliated Tribes, and Turtle Mountain Band of Chippewa agree to the following stipulations and the principle that Native American human remains and burial goods are handled in an appropriate manner. The signatories shall ensure that the following measures are carried out.

STIPULATIONS

I. DEFINITIONS

A. Legal Owner - For purposes of this agreement, the general concept of "legal" and/or ownership of human skeletal remains and associated burial goods is not recognized until identified under NAGPRA. To the degree that the Omaha District may be deemed under law to have jurisdiction of skeletal remains and burial goods (cultural items), the Omaha District disclaims such jurisdiction and accepts only custodial responsibility for the purposes of protection of burial sites and, if necessary, reinterment.

B. Burial Goods - shall mean all sacred objects, which shall generally include all items believed to have been associated with the human skeletal remains or as part of the death rite, ceremony, or burial grounds, including but not limited to projectile points, knives, scrapers, articles of clothing, ornaments, beads, and religious items such as pipes, stones, dishes and pottery, feathers, and any item so identified and found, as determined in the field through consultation between the designated NDIRC representative and the archeologist.

C. Department - means the North Dakota State Department of Health and Consolidated Laboratories.

D. Duly Designated Representative - shall mean any person who is a member of the NDIRC and can provide written documentation of appointment to this committee by his/her respective tribal governing body.

E. In Situ - means in the human burial site per se or in the proximate area or vicinity of unmarked human burials.

F. Inventory - shall mean the physical creation of

1. A listing of the contents of unmarked human burials
2. Other existing records.

G. Qualified Archeologist - means an individual who meets the minimum qualifications as defined in Secretary of the Interior's Standards and Guidelines (Federal Register, vol. 48, no. 190, page 44739).

H. Society - means the State Historical Society of North Dakota.

I. Media - shall mean any form of communication including, but not limited to, electronic or other forms of print, audio, and video mediums. The term media does not include Omaha District technical reports to the file that are used for in-house documentation.

J. Burial Identification - is defined as the visual observation of a site by a qualified archeologist and a NDIRC representative to determine if a burial is present.

K. Nontribal - is defined as the remains of a non-Indian person buried in an unmarked grave with Native belongings and/or other items which would lend the impression that the deceased had been buried in a tribal manner due to adoption, marriage, or other means.

L. Intrusive Archeological Testing - any method or manner of testing that touches, destroys or intrudes on the suspected or confirmed burial chamber, per se.

M. Study - means the examination by a qualified archeologist, with the assistance from specialists, as necessary, and in the presence of the NDIRC, of human burial sites, human remains, and burial goods, which examination is conducted in situ, unless the physical safety of the NDIRC member(s), archeologist(s), and others may be in jeopardy, or as agreed to in the field. The study consists exclusively of the following activities under the following circumstances:

1. In all instances, the taking of soil and floral samples as may be appropriate.
2. In those instances wherein the burial can be restored by backfilling, stabilization, and other protective measures from further disturbance, study will not be conducted. Notification procedures described herein apply in this instance as well, however, and restoration of all sites is to be completed by the NDIRC. Upon request by the NDIRC, the Omaha District will provide assistance.
3. In those instances wherein the burial cannot feasibly be restored, but must be disinterred or collected completely and reinterred in another location, the visual observation and written description of the human burial site and the measurement and weighing of the human remains and burial goods after disinterment from the burial will be conducted in situ through an archeological excavation of the site. Such study shall only be conducted following consultation with the NDIRC, and in the presence of at least one of its members.
4. In those instances wherein in situ examination is not feasible because certain contents of a human burial have been physically separated from the original burial site, those human remains and any burial goods that have been so separated shall be delivered to the NDIRC. Such human remains and burial goods are not to be examined scientifically for any purpose except when the following situation applies:

Within five business days following notification of discovery, a records check, and a thorough search of the proximate area, at a minimum, will be made by the Omaha District to locate the human burial site in which such human remains and any burial goods were originally interred. In the event that the original burial site is located, examination of such burial site, in addition to those human remains and burial goods which have been separated from the original burial site, will be conducted within five business days of the discovery of the original burial, but only in the event the burial site must be excavated for protection. Such study shall only be conducted following consultation with the NDIRC, and in the presence of at least one of its members, in accordance with the scope of study as defined herein.

II. INADVERTENT DISINTERMENT - NOTIFICATION

Upon having received notification of the actual or potential disturbance or the discovery of a human burial site, human remains, or burial goods, the Omaha District shall, within a period of twenty-four hours, report the receipt of such notification to the appropriate NDIRC contacts. Based upon the information received from the person providing such notification, the Omaha District shall additionally inform the Society and the Department as to the exact location and state (condition) of the human burial site, human remains, or burial goods of which notification was received, for the purpose of obtaining their assistance (through a records search) in the possible identification of the deceased. In the event that either the Omaha District or the NDIRC representative(s) have reason to suspect that the burial contains a victim of a recent prosecutable crime or accidental death, a local law enforcement officer will be notified.

III. INADVERTENT DISINTERMENT - STUDY

Within a period of two business days (although every effort will be made to keep the timeframe under twenty-four hours) from the time the Omaha District has received notification of the actual or potential disturbance or the discovery of a human burial site, human remains, or burial goods, the Omaha District and the NDIRC representative(s) shall commence initial examination of any human remains not associated or suspected of a crime or accidental death as determined above which are the subject of the notification and undertake exclusively the following activities:

1. The human burial site or its exposed contents must be initially examined by the Omaha District to attempt to determine the lineal descendants (next-of-kin), or to determine race and age of the remains, if possible, using relevant available and solicited information (e.g., plats, maps, records, interviews with tribal members and landowners knowledgeable of the site in question, and associated burial goods). This initial examination must be conducted in consultation with the NDIRC, and in the presence of at least one of its members.
2. If a presumption as to lineal descendants (next-of-kin), or a determination of race and age can be made based upon location, historical data, and any associated burial goods, this information must be used to determine disposition of the human burial site, human remains, or burial goods by the Omaha District and the NDIRC. Disposition must be in accordance with NAGPRA and requirements as set forth herein.
3. If it is determined by initial examination that the human remains are non-Indian and non-Tribal, the remains will be further examined within the applicable scope of study as defined herein. Further study and final disposition of these remains will be at the discretion of the Omaha District, with assistance from the NDIRC, if requested.
4. If it is determined by initial examination that the human remains are Indian, the remains will be further examined within the applicable scope of study as defined herein, and disposition of these remains will be in accordance with paragraph 2 above.

5. If it cannot be determined by means of such initial examination that the human remains are either Indian or non-Indian, it will be presumed that the human remains are Indian, based upon the experience of the Omaha District and the NDIRC.

IV. INADVERTENT DISINTERMENT - RECOVERY, RESTORATION AND REINTERMENT

A. In consultation with the NDIRC, the remains will be turned over to the proper legal authorities if it is determined that a recent crime was committed or suspected. Law enforcement and health officials will recover any remains resulting from a recent prosecutable crime or accidental death (i.e. drowning).

B. Within a period of two business days (although every effort will be made to keep the timeframe under twenty-four hours), the NDIRC representative, in consultation with the Omaha District representative, if necessary, shall make a determination as to whether the burial can be adequately and safely restored and protected in situ or whether, in the alternative, the contents of the burial should be disinterred completely and reinterred in another location.

C. Identification of a suspected human burial site, in consultation with a NDIRC representative, is an acceptable activity. Intrusive archeological testing methods are prohibited.

D. Prior to the restoration or reinterment of the burial, the NDIRC in consultation with the Omaha District, along with other possibly affiliated tribe(s), if any, shall attempt to determine the tribal identity or affiliation of the human remains and any burial goods interred in the burial site.

E. If it is determined that the disturbed burial can be adequately and safely restored and protected in situ, the NDIRC shall, as soon as practicable, cause the burial to be backfilled, stabilized, and protected from further disturbance by the human activities or natural processes, which caused the disturbance in the first instance.

F. If, on the other hand, it is determined that the in situ restoration of the burial is not feasible, the NDIRC shall, as soon as practicable and subsequent to the completion of any study conducted on the contents of the burial at the direction of the Omaha District and pursuant to the scope of study as defined herein, and if lineal descendants cannot be ascertained, cause the disinterred human remains and any and all burial goods to be reinterred on Indian lands within the boundaries of the appropriate Indian reservation, as determined by the NDIRC.

G. Each such restoration and reinterment shall provide an opportunity for appropriate tribal religious ceremony or ceremonies. The Omaha District agrees to fund the expenses of the NDIRC members participating in restoration or reinterment ceremonies.

V. PLANNED DISINTERMENT

A. For all activities undertaken on lands managed by the Omaha District, the general policy shall be strict avoidance of all human burials, whether marked or unmarked, whenever possible.

B. For all instances where avoidance is not possible, the Omaha District shall undertake to reach separate memorandums of agreement with the NDIRC, on a case by case basis. Under no circumstances will any activity proceed until consultation between the Omaha District, the NDIRC, and any other interested parties is completed.

VI. CONSULTATION

A. Under no circumstances will the Omaha District provide details of any burial disturbance to any public, private, or governmental media.

B. The NDIRC will provide a prioritized list of points of contact (Appendix 2). The Omaha District will contact, in priority order, a NDIRC member when human remains and burial goods are reported. The NDIRC point of contact will in turn notify other members of the committee as necessary. The Omaha District will identify counterpart personnel who will act as liaison(s) and coordinator(s). Both parties will notify each other in the event of change in personnel.

C. At the invitation of the NDIRC, the Omaha District will attend at least one quarterly NDIRC meeting annually to review any activities that involve this Agreement since the previous joint meeting.

D. On those rare occasions when either party is unable to meet its commitments as pertaining to timeframe schedules for any activity specified herein, the party that is unable to meet the schedule will notify the other party as soon as physically possible to reschedule the activities to the mutual satisfaction of both parties. Emergency actions will be coordinated telephonically.

VII. CHANGES

A. Should a dispute or competing claim arise during the course of this Agreement, the Omaha District will consult with the party(ies) in the dispute to resolve the objection or claim.

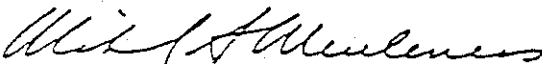
B. If any signatory to this Agreement believes that the terms of the Agreement cannot be carried out, or that an amendment must be made, that party shall notify the other signatories and request consultation to resolve the issue or amend the Agreement.

C. Other tribes may become parties to this Agreement.

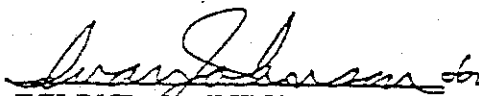
D. Any signatory may terminate their participation in this Agreement upon 30 days written notice to the other signatories.

Obligations and expenditures agreed to by the Omaha District in this document are subject to the availability of funds.

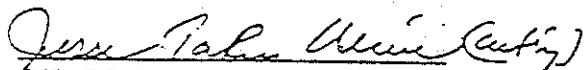
Execution of this Memorandum of Agreement is evidence that the signatories have consented to enter into an Agreement as provided for in NAGPRA Section 11 (1) (B).


MICHAEL S. MEULENERS
Colonel, Corps of Engineers
Commanding


December 13, 1993
Date


WILBUR D. WILKISON, Chairman
Three Affiliated Tribes
Business Council

Oct 5, 1993
Date


CHARLES W. MURPHY, Chairman
Standing Rock Sioux Tribe

10-5-93
Date


RICHARD L. LAFROMBOISE, Chairman
Turtle Mountain Band of Chippewa

10-5-93
Date


PETER BELGARDE, Chairman
Devil's Lake Sioux Tribe

Oct 5, 1993
Date

NORTH DAKOTA INTERTRIBAL REINTERMENT COMMITTEE
(on following page)

POSITION OF THE NORTH DAKOTA INTERTRIBAL REINTERMENT COMMITTEE
OFFICIAL REPRESENTATIVES
OF THE TRIBAL GOVERNMENTS
OF THE
STANDING ROCK SIOUX TRIBE
TURTLE MOUNTAIN BAND OF CHIPPEWA
THREE AFFILIATED TRIBES
DEVILS LAKE SIOUX TRIBE

1. We are categorically opposed to the excavation, curation, and study of all Indian remains and grave goods found in our homelands. We submit that these activities are ethnocentric and extremely racist, and violate our religious beliefs.
2. We want released to us all excavated ancestors and their personal belongings taken from our homelands for immediate reburial on Indian lands.
3. We reject any arguments that scientific analysis must be done on remains to establish tribal identity and assert that we do not have to prove we are related to Indian remains taken from our homelands. We further submit that there is no scientific test available today which conclusively identifies Indian remains as to tribal origin, and that any such findings made by science are strictly of a speculative nature.
4. There will be no subsequent disinterment of reburied ancestors or their belongings taken from our homelands for further study in the future.
5. The bodies and belongings of our relatives are not the property of any individual, institution, or government.

Note: It was mutually agreed that the position of the North Dakota Intertribal Reinterment Committee would be attached to the MOA. This does not reflect the policy of the Omaha District, Corps of Engineers.

Ronald S. Little Owl
RONALD S. LITTLE OWL
Three Affiliated Tribes

10/11-93 at 2:22 P.M.
CST

Date

Jane Martin Lone Fight
JANE MARTIN LONE FIGHT
Turtle Mountain Band of Chippewa

Date

Pemina Yellow Bird
PEMINA YELLOW BIRD
Three Affiliated Tribes

Date

Francis Cree
FRANCIS CREE
Turtle Mountain Band of Chippewa

Oct. 5-1993
Date

Tim Mentz Sr.
TIM MENTZ, SR.
Standing Rock Sioux Tribe

Oct. 5, 1993
Date

Elgin Crowsbreast
ELGIN CROWSBREAST
Three Affiliated Tribes

Oct. 5, 1993
Date

Alta Bruce
ALTA BRUCE
Turtle Mountain Band of Chippewa

10/26/93
Date

George Ironshield
GEORGE IRONSHIELD
Standing Rock Sioux Tribe

10-5-93
Date

Paul Little
PAUL LITTLE
Devils Lake Sioux Tribe

11-13-93
Date

Thomas Bullhead
THOMAS BULLHEAD
Standing Rock Sioux Tribe

10-5-93
Date

Denise Peltier
DENISE PELTIER
Turtle Mountain Band of Chippewa

11/19/93
Date

North Dakota Intertribal Re-internment Committee Members
As of June 2001

Mr. George Iron Shield
Standing Rock Sioux Tribe
Home: P. O. Box 231
McLaughlin, SD 57642

(701) 854-2080 (message)

Mr. Sam Little Owl
Three Affiliated Tribes
RR1, Box 103
Halliday, ND 58636

(701) 938-4462 (home)

Mr. Francis Cree
P. O. Box 448
Denseith, ND 58329

(701) 263-4251 (home)

Mr. Elgin Crows Breast
Three Affiliated Tribes
P. O. Box 220
P. O. Box 673 (home)
New Town, ND 58763

(701) 627-4399 (office)
(701) 627-4781 (tribal office)
(701) 627-3805 (fax)
(701) 627-4389 (home)

Ms. Alta Bruce
Turtle Mountain Band of Chippewa
P. O. Box 900
P. O. Box 1355 (home)
Belcourt, ND 58316
Alta.Bruce@mail.IHS.gov

(701) 477-6111 ext 129 (work)
(701) 477-8437 (fax)
(701) 246-3634 (home)

Ms. Jane Martin
Turtle Mountain Band of Chippewa
P. O. Box 92
Rolette, ND 58366
jmmartin@utma.com

(701) 477-5655 or 5653 (work)
(701) 477-0796 (fax)
(701) 246-3563 (home)

Ms. Pemina Yellow Bird
Three Affiliated Tribes
P. O. Box 1512
Belcourt, ND 58316
pemina@hotmail.com

(701) 477-9412 (home)
(701) 477-8437 (fax)

Appendix C

DISCOVERY INFORMATION SHEET

Date: _____ Time: _____

Reported By: _____

Telephone (W): _____ (H): _____

Tribe / Reservation: _____

Lake / Project: _____

County / State: _____

Township / Range / Section: _____

Discovery: _____

Report Submitted to (Name): _____ Telephone (W): _____

Actions Taken to Date: _____

Other Notifications Made (date & time): _____

EOC: (402)221-4148

Fax Copies to : (402)221-4257

Posted by: _____

Date and Time _____

Native American tribes along COE mainstem projects within the Omaha District**North Dakota**

Three Affiliated Tribes, Fort Berthold Indian Reservation, Lake Sakakawea

North and South Dakota

Standing Rock Sioux Tribe, Standing Rock Indian Reservation, Lake Oahe

South Dakota

Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation, Lake Oahe

Lower Brule Sioux Tribe, Lower Brule Indian Reservation, Lake Sharpe, and Lake Francis Case

Crow Creek Sioux Tribe, Crow Creek Sioux Reservation, Lake Sharpe, and Lake Francis Case

Yankton Sioux Tribe, Yankton Reservation, Lake Francis Case

Nebraska

Santee Sioux Tribe, Santee Sioux Reservation, Lewis and Clark Lake

North Dakota Intertribal Reinternment Committee (NDIRC) Membership**Notification Priority Order**

- | | | | |
|--------------------------------|--|---------------|----------------------------------|
| 1. Mr. Ronald "Sam" Little Owl | 701-938-4462 (H) | Halliday, ND | Three Affiliated Tribes |
| 2. Mr. Tim Mentz (THPO) | 701-854-2120 (W)
701-854-2138 (Fax)
701-854-2080 (H) | Ft. Yates, ND | Standing Rock Sioux Tribe |
| 3. Ms. Alta Bruce | 701-477-6111, Ext. 129 (W)
701-477-8135 (Fax)
701-246-3283 (H) | Belcourt, ND | Turtle Mountain Band of Chippewa |
| 4. Ms. Jane Martin | 701-477-5655/5653 (W)
701-477-0796 (Fax)
701-246-3563 (H) | Rolette, ND | Turtle Mountain Band of Chippewa |

Remaining members in random order if #1-#4 cannot be reached within the 24-Hour notification period

- | | | | |
|------------------------|--|----------------|----------------------------------|
| Mr. Elgin Crows Breast | 701-627-4399 (W)
701-627-4781 (Tribal Office)
701-627-3805 (Fax)
701-627-4389 (H) | New Town, ND | Three Affiliated Tribes |
| Pemina Yellow Bird | 701-477-9412 (H)
701-871-1585 (Cellular)
701-477-9413 (Fax) | Belcourt, ND | Three Affiliated Tribes |
| Mr. Francis Cree | 701-263-4251 (H) | Dunseith, ND | Turtle Mountain Band of Chippewa |
| Mr. George Iron Shield | 701-854-2080 (Lv Msg) | McLaughlin, ND | Standing Rock Sioux Tribe |
| Mr. Tom Bullhead | 701-854-2068 (H) | Ft. Yates, ND | Standing Rock Sioux Tribe |

Tribal Officials

Three Affiliated Tribes	Mr. Tex Hall, Chairman, Term Expires: 11/02	701-627-4781 (W) 701-627-3805 (Fax) 701-759-3339 (H)	New Town, ND
	Mr. Mark Fox Vice Chairman	701-627-3728 (W) 701-862-4399 (H)	
	Mr. Daylon Spotted Bear Tribal Secretary	701-627-4781 (W) 701-938-4694 (H)	
Standing Rock Sioux	Mr. Charles W. Murphy, Chairman, Term Expires: 10/01	701-854-7202 (W) 701-854-7299 (Fax) 701-422-3328 (H) 701-471-2070 (Cellular)	Fort Yates, ND
	Mr. Tom Iron, Vice Chairman	701-854-7202 (W) 701-471-2037 (Cellular)	
	Mr. Jesse Taken Alive, Councilman at Large	701-854-7202 (W) 605-823-2209 (H)	
	Mr. Dwight Koch Tribal Game and Fish	701-854-7236 (W) 888-210-6115 (Cellular)	
Cheyenne River Sioux	Mr. Gregg J. Bourland, Chairman, Term Expires: 12/02	605-964-4155 (W) 605-964-4151 (Fax) 605-964-3955 (H)	Eagle Butte, SD
	Mr. Louis DuBray Vice Chairman	605-964-4155 (W) 605-733-2536 (H), 605-365-7117 (Cellular)	
	Ms. Colette Iron Hawk Tribal Secretary	605-964-8311 (W) (H)	
Lower Brule Sioux	Mr. Michael B. Jandreau, Chairman, Term Expires: 10/04	605-473-5561 (W) 605-473-5605 (Fax) 605-869-2535 (H)	Lower Brule, SD
	Mr. Orville "Red" Langdeau, Jr. Vice Chairman	605-473-5561 (W) 605-473-5307 (H)	
	Mr. Scott Jones, Cultural Resources Officer	605-473-5399 (W) 605-473-0617 (H) 605-473-5465 (Fax) e-mail: sung@wcnenet.com	
Crow Creek Sioux	Ms. Roxanne Sazue, Chairperson, Term Expires: 04/02	605-245-2221 (W) 605-245-2470 (Fax) 605-245-2260 (H)	Fort Thompson, SD
	Mr. Randy Shields, Vice Chairman	605-245-2296 (W) 605-245-2495 (H)	
	Mr. Joe Shields, Tribal Secretary	605-245-2221 (W) (H)	

Tribal Officials - Continued

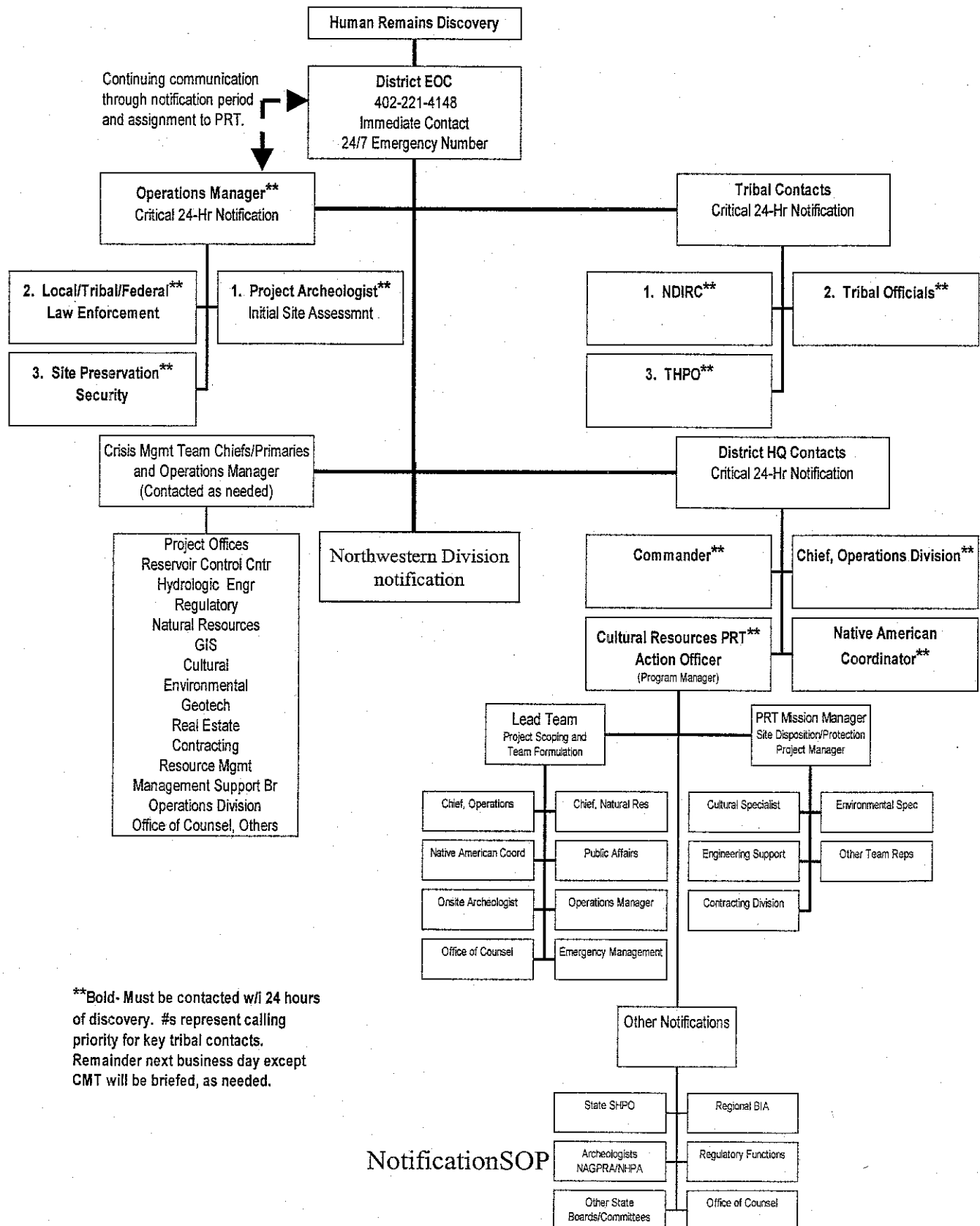
Yankton Sioux	Ms. Madonna Archambeau, Chairperson, Term Expires: 09/03	605-384-3804 (W) 605-384-5687 (Fax) 605-384-4028 (H)	Marty, SD
	Mr. Hugo Vephier, Vice Chairman	605-384-3804 (W) 605-384-5552 (H)	
	Mr. Ben Gonzales, Tribal Secretary	605-384-3804 (W) 605-384-5990 (H)	
Santee Sioux of Nebraska	Mr. Roger Trudell, Chairman, Term Expires: 10/01	402-857-2300 (W) 402-857-2307 (Fax) 402-857-2671 (H)	Niobrara, NE
	Ms. Thelma Thomas Vice Chairman	402-857-2393 (W) 402-373-4307 (H)	
	Ms. Diane LaPointe Tribal Secretary	402-857-2302 (W) (H)	

Tribal Historic Preservation Officers (THPO)

Mr. Tim Mentz	701-854-2120 (W) 701-854-2138 (Fax) 701-854-2080 (H)	Ft. Yates, ND	Standing Rock Sioux Tribe
Mr. Sebastian LeBeau "Bronco"	605-964-7554 (W) 605-854-4151 (Fax)	Eagle Butte, SD	Cheyenne River Sioux Tribe

Notification SOP for Human Remains Found on Project Lands

05 October 2000



NotificationSOP

Acquisition Strategy Plan. The Omaha District Integrated Process Team (IPT), Program and Project Managers will ensure that the Cultural Resources Acquisition Strategy will be followed for all projects within the program. The cultural resource program has three goals that it uses as guides for the execution of the acquisition strategy plan. They are to a) continue to provide maximum practicable business opportunities to small business concerns (specifically Native American businesses), b) collaborate with its Public and Private Partners to enhance the technical and professional development of small business concerns, and c) utilize the best contracting tool available to complete the given requirements. Details on how the Cultural Resources Program plans to meet goals a) and c) are laid out in the following paragraphs. The Cultural Resources Program Manager will work with and support the Omaha District Small Business Manager and contracting personnel to accomplish goal b) within the context of activities they are currently undertaking.

i) Acquisition Review. The Cultural Resource Program Manager will obtain CENWO-DB review for all proposed contracted out actions between \$10,000 and \$100,000 prior to initiating the acquisition process or publishing of the requirement in the Commerce Business Daily (CBD). Ample time is calculated into the acquisition strategy to facilitate the Small Business Administration (SBA) review of the recommended acquisition strategy. SBA's concurrence or rejection is documented on DD Form 2579, Small Business Coordination Sheet. The Contracting Officer is responsible for generating DD Form 2579.

ii) Acquisition Strategy Board (ASB). Cultural Resource Project Managers will continue to use the Acquisition Strategy Board (ASB) to develop the acquisition strategy for all proposed contracted out actions over \$100,000.00. The Deputy for Small Business will continue to utilize the PEP process to assist the District Leadership with the identification of projects for inclusion in the District Small Business Work Plan.

iii) Small Business Set-Asides

(1) Dollar Thresholds. An acquisition that has an anticipated dollar value exceeding \$2,500, but not over \$100,000 will be reserved for small business concerns.

(2) Justification. In absence of written justification, acquisition outside of the Small Business Demonstration Program's designated industries (Standard Industrial Classification groups 15) will be set-aside for small business concerns.

(3) Market Research Analysis. Program Managers will initiate a market research analysis through the Contracting Division prior to contracting out for technical or professional service type indefinite delivery type contracts (IDT). Market research analysis is required for follow-on IDT to an existing requirement, or exercise of an option. The requirements will be packaged so as not to preclude performance by small business concerns as prime contractor unless to do so would result in significant benefits in terms of reduced life cycle costs, improved services, or both. The Contracting Division will facilitate the market research analysis.

iv) Standard Operating Procedure for Project Acquisition Strategy

(1) Purpose. This procedure will standardize the process for acceptance and selection of a project execution mechanism for all cultural resource projects. This procedure will be used regardless of project phase (e.g. inventory, testing and evaluation, impact assessment, studies, design, or mitigation) for all new projects where the estimated value of all anticipated project work and services is over \$100,000. Further, procedures are provided to ensure project acceptability, availability of necessary resources, selection of the best method of execution, and proper documentation of the acquisition process. This is intended to satisfy the Acquisition Strategy requirements of FAR Part 7 and supplements thereto.

(2) Small Business Set-Aside. FAR 19.5 (b) states that “The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns (2) award will be made at a reasonable price. We will use acquisition history combined with market research conducted by the contracting officer to satisfy this requirement.

(3) Application. The result of this process will be the development of a Project Acquisition Strategy Plan (PAS). A PAS (template at end of this Appendix) is required when the estimated value of all anticipated project work and services is greater than \$100,000. When a PAS Plan is required, the Project Manager (PM) will take the lead in preparing the plan for submittal. When consensus is achieved, the PM will prepare a memorandum (template at end of this Appendix) documenting the decision, and Acquisition Strategy Board (ASB) members will concur by signature. This memorandum will be submitted to the Contracting Officer (CO) for approval then routed to the contract specialist responsible for the acquisition action. When consensus cannot be reached, the CO will make the final decision regarding method of project execution. The PAS will establish execution procedures for as many phases of the project as are required and feasible with the available information. The PM will be responsible, with input from Contracting and others, for developing a milestone schedule for preparation and submittal of the plan. This acquisition schedule is required and will be included in the PAS. When there are major changes to project criteria, the ASB will reconvene and reconsider the selected alternative. A new phase of a project, not already established in an existing PAS.

(4) Procedures. The Omaha District has developed a number of different contracting tools specifically to meet the varying requirements associated with inventory, testing and evaluation, impact assessment, studies, design, or mitigation at various cultural resource sites. These options provide alternatives to new competitive site-specific contracts when project requirements dictate. When projects require Omaha District execution, they will be reviewed based upon project specific requirements and the best strategy for execution will be determined. It is the responsibility of the PM to initiate all actions which are required by this SOP including: arrange all necessary

meetings; initiate all communications between District elements; and provide continuing coordination and communications with the customer. New projects exceeding \$100,000 in size will be subject to the review and recommendation procedures of the ASB. This review will establish:

- Critical project criteria.
- Acquisition planning requirements.
- Availability of adequate engineering, construction, and support resources.
- Identification of available execution alternatives (In-house vs. contract, types of contracts), and selection of best alternative.
- Implementability of the project within schedule, or other constraints.
- Legal requirements or constraints which impact project execution.

(5) Meetings. The PM will arrange to meet with the ASB by contacting the ASB chairperson. Meetings with the ASB will be scheduled as early in the process as possible. All ASB members, or designated alternates, will attend the meeting and, based upon project requirements, will develop a recommended contracting strategy. The PM will provide ASB members with both a written and verbal summary of the project history, USACE involvement, current status, and acquisition consideration at the initial ASB meeting. It is recommended that draft PAS's be provided to ASB members at least 10 days in advance of the meetings. Acquisition decisions will be based upon best available information. Often, a decision will be reached at the initial project meeting and the memorandum signed and sent forward. In some cases, the project requirements will be such that additional information, documentation, or review will be necessary. In these cases, the PM will work with the customer and obtain all available information, distribute the information, and reconvene the ASB or arrange to be on the agenda of the next scheduled ASB meeting, as required.

(6) Roles. The following Omaha District activities will have permanent members on the ASB. Each member will participate in the selection of the contract mechanism. Their participation will include:

(a) Project Management: Receive project request from customer, ensure availability of funding, obtain necessary project information, provide project information to ASB members, PM prepares ASB Memorandum and obtains necessary signatures, and PM coordinates ASB decisions with those outside the district.

(b) Engineering Division: Provide management and technical input in Engineering issues, assure adequate Engineering resources, PM coordinates within Engineering and Planning Division, and recommends specific contractor (or in-house),

(c) Operations Division: Ensures availability of Construction-Operations Division resources and represents construction phase concerns.

(d) Contracting Division: Chair ASB, provide information regarding use of specific contracting alternatives, provide information about specific Contractors, recommend specific contract mechanisms, identify requirements for AP/PAS approval, and prepares formal AP (if necessary).

(e) Office of Counsel: Evaluate legal constraints on contracting alternatives, identify laws, regulations, agreements, and orders that affect the project, and assures fiscal law requirements are met.

PROJECT ACQUISITION STRATEGY PLAN AND MEMORANDUM

MEMORANDUM FOR RECORD

SUBJECT: Cultural Resources Program Project Acquisition Strategy Board (PASB) Worksheet

1. Project Description:

a) Title [List the title of the project(s) and their location(s)]:

b) Scope of Current Request (provide a brief, but concise description):

c) Project Type:

- | | |
|---|---|
| <input type="checkbox"/> Supplies | <input type="checkbox"/> Mitigation |
| <input type="checkbox"/> Services | <input type="checkbox"/> Testing and Evaluation |
| <input type="checkbox"/> Inventory | <input type="checkbox"/> Monitoring/Enforcement |
| <input type="checkbox"/> Reconnaissance | <input type="checkbox"/> Other: _____ |

d) Customer Name:

e) Project Manager:

f) Estimated Project Cost:

g) Project Execution Schedule:

Task/Submittal	Start Date	End Date
Task 1		
Task 2		
Task 3		
Task 4		

h) Funding Source:

- | | | |
|-------------------------------------|---|--|
| <input type="checkbox"/> O&M | <input type="checkbox"/> Construction General | <input type="checkbox"/> General Investigation |
| <input type="checkbox"/> Regulatory | <input type="checkbox"/> HTRW | <input type="checkbox"/> Other: _____ |

i) Customer or Regulator Special Requirements:

j) Key Resources Required:

- | | | | |
|---------------------------------------|---------------------------------------|--|-------------------------------------|
| <input type="checkbox"/> Archeologist | <input type="checkbox"/> Economist | <input type="checkbox"/> Environmental | <input type="checkbox"/> Biologist |
| <input type="checkbox"/> Geotechnical | <input type="checkbox"/> Hydrologic | <input type="checkbox"/> Real Estate | <input type="checkbox"/> Estimating |
| <input type="checkbox"/> Counsel | <input type="checkbox"/> Other: _____ | | |

2. Is Market Research Required?

- ☐ Yes, because the recommended options is a new contract procurement.
- ☐ No (If no, check appropriate box below):
- ☐ Market Research is not required because it was conducted at the time the proposed IDT contract was procured.

SUBJECT: Project Acquisition Strategy Board Worksheet (PASBW) for "Project Description", "Project Name and Location"

- ☐ Market Research was conducted previously on _____(Date).
- ☐ Market Research has already been conducted and the results are as follows: _____

3. CENWO Project Execution Role:

Example: CENWO is functioning as the service center for Customer work at "Project Name and location" (if applicable). CENWO will oversee the progress of "brief description of customer tasking".

4. Acquisition Strategies Considered: Each option checked below, which were considered as possible execution methods, should include a brief analysis of its pros and cons. Below are the multiple CENWO project execution options evaluated:

- | | |
|--|---|
| <input type="checkbox"/> In-House Design | <input type="checkbox"/> Invitation for Bid (IFB) |
| <input type="checkbox"/> Site Specific A-E Contracts | <input type="checkbox"/> Request for Proposal (RFP) |
| <input type="checkbox"/> SB Services IDT | <input type="checkbox"/> Preplaced Remedial Action Contract |
| <input type="checkbox"/> 8(a) Services IDT | <input type="checkbox"/> Misc. SB IDT Contracts |
| <input type="checkbox"/> Large Bus Services IDT | <input type="checkbox"/> Small Business Set-Aside |
| <input type="checkbox"/> Woman Owned SB IDT | <input type="checkbox"/> GSA Schedule |
| <input type="checkbox"/> TERC | <input type="checkbox"/> Other _____ |

Contract Type

- ☐ Firm Fixed Price
- ☐ Cost Reimbursable

Evaluation Factors

- ☐ Price
- ☐ Technical/management
- ☐ Best Value (combination)

a) In-House: This option (is/is not) recommended due to...

b) Site Specific A-E Contracts: This option (is/is not) recommended due to...

c) Site Specific 8(a) Services. This option (is/is not) recommended due to...

d) SB & 8(a) Services IDT Contracts: This option (is/is not) recommended due to...

e) Large Business Services IDT: This option (is/is not) recommended due to...

f) Other: This option (is/is not) recommended due to...

5. Recommended Action Plan: All members "agreed/or a consensus was reached" that the most favorable acquisition strategy would be the use of: (The initial PASBW shall include a recommendation from the PM or Lead Technical Proponent. Discussion would also include a short evaluation of options evaluated, but not selected. The final PASBW shall state the PASB recommended projection execution/acquisition strategy.)

SUBJECT: Project Acquisition Strategy Board Worksheet (PASBW) for "Project Description", "Project Name and Location"

6. Requirement for Formal Acquisition Plan. Acquisition Plans are required for new contract procurement actions that exceed \$15 million, exceed 5 years in duration, or are outside CENWO assigned AOR.

☐Yes

☐No

7. The following acquisition strategy is recommended by the PASB for this project:

8. We, the members of the PASB for this project, have reviewed the information attached with this worksheet and concur with the recommended execution option in described in paragraph

Recommended:

<u>Name</u>	<u>Office</u>	<u>Concur/Nonconcur*</u>	<u>Date</u>
CR Project Manager	CENWO-PM-AE	<hr/>	<hr/>
Contracting Div Rep	CENWO-CT	<hr/>	<hr/>
Operations Div Rep	CENWO-OD	<hr/>	<hr/>
Small Business Rep	CENWO-SA-DB	<hr/>	<hr/>
Native American Coordinator	CENWO-SA-NA	<hr/>	<hr/>
Office of Counsel Rep	CENWO-OC	<hr/>	<hr/>

Reviewed:

<hr/>	<hr/>	<hr/>
Chief, Planning PPPM Branch		

Approved:

<hr/>	<hr/>	<hr/>
Chairman, Acquisition Strategy Board Contracting Officer		

*PASB members that do not concur with the recommended acquisition strategy must provide written comments to support their position. The PASB Chairman will consider this information prior to final approval. As deemed appropriate by the Chairman, attempts will be made to resolve any differences identified by the PASB members. Disputes which cannot be resolved will be follow the procedure as identified in Paragraph 6b. of the Standard Operating Procedure for the "HTRW" Project Acquisition Strategy Process.

PROJECT MANAGEMENT PLAN (PMP)
WITH QUALITY CONTROL PLAN
(Template)

PROJECT MANAGEMENT PLAN

CULTURAL RESOURCE PROGRAM
NAME OF PROJECT

LOCATION
CITY, STATE

MONTH YEAR



U.S. Army Corps of Engineers

Omaha District
Northwestern Division

CULTURAL RESOURCE PROGRAM
NAME OF PROJECT

LOCATION
CITY, STATE
(Month Year)

1 GENERAL.

1.1 Introduction. This document presents the Project Management Plan (PMP) for the [Name of the project]. The PMP is a living working level document and will be updated as conditions change. The plan will be updated as changes occur.

1.2 Authority. This project is authorized by the Cultural Resources Program Management Plan, which itemizes projects that will be accomplished during the current fiscal year. Authority for this project is the National Historic Preservation Act of 1966 as amended.

1.3 Project Description. [Insert a brief project description to include the objectives, participating groups, submittals, etc.]

2 STUDY PLAN.

2.1 Scope of Work. [Include two sentences that describe the requirements of the scope]. A summary of required tasks by discipline to complete this assessment is provided in the expanded scope-of-work provided in Appendix A.

2.2 Schedule. This study is projected to last approximately [insert the proper number] months. A detailed study schedule is provided in Appendix B. During the course of the study, the schedule will be revised as necessary to show current conditions and forecasted changes. Schedule compliance and changes will be tracked and documented. Revisions to the schedule will be coordinated with the project delivery team and other involved groups sponsor as provided in the Change Control Plan.

2.3 Cost Estimate. The total cost for completion of the project is estimated at [insert government estimate cost]. A line item breakdown of project costs and required resources is provided in Appendix C. The negotiated cost for completing the project is also included in Appendix C.

2.4 Product Development Team. The members of the product delivery team are provided in Appendix D. Team members will be assigned to those disciplines where no personnel are assigned as the work effort progresses. The Corps' project manager will be the primary point of contact. Others with primary involvement are also listed as members of the product delivery team.

2.5 Quality Control Plan. Each individual is required to adhere to the quality control requirements and procedures established within their respective Sections and Branches. This

should include checks and internal reviews that will be performed to insure that the products meet quality requirements. In addition, this Quality Control Plan requires that a quality control review (QCR) of the draft initial assessment report be performed (See Appendix E for QCR Review Sheet).

2.6 Quality Control Review. The quality control review (QCR) is a critical element of the Corps quality control process. An independent technical review team will perform the QCR of the draft initial assessment report to insure that all products conform to District policy and procedures. Persons selected as QCR reviewers will have sufficient expertise and experience in the disciplines to be reviewed and a degree of independence from the individuals who prepared the products. A QCR reviewer would not normally be someone who has closely participated in the study in an advisory or mentoring capacity. The members of the independent technical review team will be selected at a later date.

3 COMMUNICATIONS.

3.1 Communication Plan. This project will utilize the communications plan outlined in the Cultural Resources Program Management Plan. Multiple avenues will be used to ensure the most input into the development and completion of the project. The Corps' management will also be kept informed through reports to the Project Review Committee (PRC) and Project Review Board (PRB). These reports are prepared by the PM and will discuss accomplishment of project objectives, identify issues, and forecast changes to schedules and costs.

3.2 Project Development Team (PDT) Meetings. Project Development Team meetings will be periodically scheduled by the PM to discuss technical issues, update status, etc.

3.3 Information Management. Electronic and hard copy files will be maintained in accordance with current policies established by the Omaha District.

3.4 Public Involvement. This project will follow the public involvement plan shown in the Cultural Resources Program Management Plan. Any changes to that approach will be documented and approved prior to implementation.

4 STUDY MANAGEMENT.

4.1 Change Control Plan. PDT members are responsible for identifying any changes in scope, budget, or schedule as early as possible so that the PM can resolve the issue, approve the change, or elevate the change to the appropriate level for action. The greater the change and its impact to the study, the higher the level of authority that may be required for action. Changes that affect the overall scope, budget, or schedule require approval by both the PM and the Sponsor. The PM maintains a record of approved changes and modifies the PMP accordingly. Unanticipated changes in the project will be accommodated with no change in total project costs so long as sufficient contingencies exist.

4.2 Safety Plan. A safety plan is not required at this stage in the study process. The need for a safety plan will be reassessed if the project progresses to the construction phase.

4.3 Acquisition Plan. This project will follow the acquisition plan as laid out in the Cultural Resources Program Management Plan. This project will be completed using [In-house/Archetitectoral-Engineering/Construction Contractor/Other] services. [If needed describe how the chosen plan was arrived at].

APPENDIX A

Scope-of-Work

APPENDIX B

Study Schedule

APPENDIX C

Study Cost Estimate

APPENDIX D

Product Development Team

PRODUCT DEVELOPMENT TEAM

Name

Project Manager
CENWO-PM

Name

Cultural Resource Specialist
CENWO-PM-AE

Name

Real Estate Specialist
CENWO-RE-PR

Name

Engineer/Other Discipline
CENWO

Name

Participating Group/Agency

Name

Participating Group/Agency

Name

Participating Group/Agency

Name

Participating Group/Agency

Name

Participating Group/Agency

Name

Participating Group/Agency

APPENDIX E

Quality Control Plan

QUALITY CONTROL PLAN

Product Development Team Members (see appendix D)

Note: This Project is not complex, does not involve state of the art design, is not politically sensitive and does not involve other design agencies other than the USACE, therefore, it has been determined that in-house Supervisory Quality Control is a sufficient level of QC for this project

Certificate of Completion

[\[Insert the name of the review that is being completed\]](#)

Location: _____ **Project Name:** _____

Product: _____ **IH-AE-IH/AE(Circle one)** **Completion date:** _____

PM: _____ **PE:** _____

QA Review: Supervisor _____ Independent IH _____ Independent AE _____ NA _____

QC Review: Supervisor _____ Independent IH _____ Independent AE _____ NA _____

Development Team Leader: _____ **Review Team Leader:** _____

	Discipline	Designer	Date
Design Architect	_____	_____	_____
Structural	_____	_____	_____
Civil	_____	_____	_____
Mechanical	_____	_____	_____
Electrical	_____	_____	_____
Environmental	_____	_____	_____
Site Planning	_____	_____	_____
Specifications	_____	_____	_____
Permits	_____	_____	_____
Cost Estimator	_____	_____	_____
Geo Geotechnical	_____	_____	_____
Hydro Hydrology	_____	_____	_____
Hydraulics	_____	_____	_____
HTRW Chemistry	_____	_____	_____
Indust Hygiene	_____	_____	_____
Plan Formulation	_____	_____	_____
Economics	_____	_____	_____
Environmental	_____	_____	_____
Flood Mgmt	_____	_____	_____
Real Estate	_____	_____	_____
Construction	_____	_____	_____
Operations	_____	_____	_____

Certificate of Completion

Quality Control Review

Location: _____ **Project Name:** _____

Product: _____ **IH-AE-IH/AE(Circle one)** **Completion date:** _____

PM: _____ **PE:** _____

QA Review: Supervisor____ Independent IH____ Independent AE____ NA____

QC Review: Supervisor____ Independent IH____ Independent AE____ NA____

Development Team Leader: _____ **Review Team Leader:** _____

	Discipline	Designer	Date
Design Architect	_____	_____	_____
Structural	_____	_____	_____
Civil	_____	_____	_____
Mechanical	_____	_____	_____
Electrical	_____	_____	_____
Environmental	_____	_____	_____
Site Planning	_____	_____	_____
Specifications	_____	_____	_____
Permits	_____	_____	_____
Cost Estimator	_____	_____	_____
Geo Geotechnical	_____	_____	_____
Hydro Hydrology	_____	_____	_____
Hydraulics	_____	_____	_____
HTRW Chemistry	_____	_____	_____
Indust Hygiene	_____	_____	_____
Plan Formulation	_____	_____	_____
Economics	_____	_____	_____
Environmental	_____	_____	_____
Flood Mgmt	_____	_____	_____
Real Estate	_____	_____	_____
Construction	_____	_____	_____
Operations	_____	_____	_____

Closeout Report

Location: _____ **Project Name:** _____

Product: _____ **IH-AE-IH/AE(Circle one)** **Completion date:** _____

PM: _____ **PE:** _____

QA Review: Supervisor _____ Independent IH _____ Independent AE _____ NA _____

QC Review: Supervisor _____ Independent IH _____ Independent AE _____ NA _____

Development Team Leader: _____ **Review Team Leader:** _____

Lessons Learned:

Significance of Annotated Review Comments:

Open Issues:

Table G-1
Integrated Process Team for Cultural Resource Management Members

Title, Division	Name	Number
District Commander	Colonel Kurt F. Ubbelohde	402-221-3900
Cultural Resources Program Manager	Larry D. Janis	402-221-3110
Planning, Programs and Project Management	Candace Gorton	402-221-4575
Operations	Kelly Crane	402-221-4410
Office of Counsel	Cathy Barnum	402-221-4019
Contracting	Cathy Vanatta	402-221-4239
Native American Coordinator	Pem Hall	402-221-3988

CHARTER
INTEGRATED PROCESS TEAM

To be completed

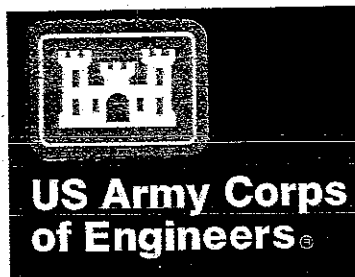
Table G-2
Cultural Resources Task Force Members

Organization	Name	Number
U.S. Army Corps of Engineers	Colonel Kurt F. Ubbelohde	402-221-3900
U.S. Army Corps of Engineers	Larry D. Janis	402-221-3110
U.S. Army Corps of Engineers	Pem Hall	402-221-3988
Three Affiliated Tribe	TBD	
Santee Sioux Tribe	TBD	
Yankton Sioux Tribe	TBD	
Rosebud Sioux Tribe	TBD	
Lower Brule Sioux Tribe	TBD	
Crow Creek Sioux Tribe	TBD	
Cheyenne River Sioux Tribe	TBD	
Standing Rock Sioux Tribe	TBD	

CHARTER
CULTURAL RESOURCES TASK FORCE

To be completed

NORTHWESTERN DIVISION
NATIVE AMERICAN DESK GUIDE



DRAFT

NORTHWESTERN DIVISION

NATIVE AMERICAN PROGRAM DESK GUIDE

**For Program Managers, Project Managers,
Supervisors, and Field Staff**

Vision:

A climate of cooperation between the Corps of Engineers and Native American Governments that results in a true partnership providing mutual benefits.

Corps Native American Program Mission:

The Corps Native American Program will be a successful component in the accomplishment of the Corps overall mission by initiating, facilitating, and enhancing understanding, communication and cooperation between the Corps and all Native American governments. This will result in efficient and timely fulfillment of Corps trust obligations and responsibilities while actively contributing to the Corps decision-making and program implementation activities.

FORWARD

The U.S. Army Corps of Engineers is in pursuit of a Strategic Vision as "the World's premier public engineering organization" to respond to our Nation's needs in time of peace and war. Federally Recognized Tribes as defined by law and policy are considered Sovereign Nations and the U.S. Army Corps of Engineers has a fiduciary responsibility to protect their Tribal way of life and Tribal Trust Resources. Our goal is to build "Synergy" with Tribal Governments, Communities, and people. We are building relationships by seeking first to understand, not merely to be understood. Together with Tribes, we can build solutions that are more positive than either of us could develop on our own. The Corps Strategic Goals are applicable to our service to Federally Recognized Tribes:

PEOPLE – Build Positive Relationships with Tribes.

PROCESS – Work Effectively with Tribes.

COMMUNICATION – It's a 2-way communication. Listen and understand. Communicate internally to understand Tribal perspective.

The U.S. Army Corps of Engineers is Committed to the Following:

Know Your Job – Division personnel must know and execute our fiduciary responsibility to Tribes in all our Corps programs.

Be Situationally Aware – Respect Tribal Perspective, Concerns and Issues.

Be Healthy – Maintain a positive attitude for healthy communications.

Treat Every Individual with Dignity and Respect – Treat Tribes, Tribal members and Tribal Cultures with respect.

Finally, Ask Yourself the following Questions:

Is it Good for Tribes?

Is it Legal and Ethical? Is it Something I am willing to be Accountable for?

If the answers to these questions are YES, then you don't have to seek permission:
JUST DO IT!

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CECW Policy Guidance Letter Number 57, Indian	
Sovereignty and Government-to-Government	
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CHAPTER I: INTRODUCTION

Purpose of this Guide.

This guide provides an overview of the special relationship we – as a Federal agency – enjoy with Federally recognized Indian Tribes. This document is intended to provide guidance for those who interact directly with Tribes. As sovereigns, tribal governments have an inherent interest in all proposed and ongoing activities that may have the potential to significantly benefit or impact tribal trust lands, resources or other interests. This special relationship is defined by Federal trust responsibilities, treaty obligations, and the inherent sovereignty of tribal governments.

The Northwestern Division includes all or part of 14 states and includes nearly one million square miles of the North Pacific Region and the Missouri River Basin. At the time of publication of this Desk Guide, there are over 576 Federally-recognized Tribes within the United States. These Tribes have been recognized by the Federal government by treaty, statute, and executive order. There are over 101 Federally-recognized tribes within the geographic boundaries of the Northwestern Division. Each Tribe has a distinct cultural heritage with its own history, values, and identity. Several of these Tribes represent some of the largest land-holding tribes within the Nation; while others have federal recognition status, but small or no land holdings.

Northwestern Division Overview: Missouri River Basin and North Pacific Region

Tribes of the Missouri River Basin

There are 28 Tribes located within the Missouri River basin. The geographic boundaries of the Missouri River Basin include the homes and lands of several bands of Lakota, Dakota, and Nakota, more commonly referred to as the Sioux, the Blackfeet, the Gros Ventres, the Chippewa-Cree, the Arikara, the Mandan, the Hidatsa, the Northern Cheyenne, the Crow, the Northern Arapahoe, the Eastern Shoshone, the Ponca, the Assiniboine, the Chippewa, the Omaha, the Winnebago, the Prairie Band of Potawatomie, the Kickapoo Tribe of Kansas, the Sac and Fox, and Iowa Tribe. In addition, several other tribes occupied aboriginal homelands in the basin but have since been relocated to other regions of the country. Most of the homelands of the Tribes in the basin are defined by exterior boundaries of a Reservation. Other large population concentrations are identified as Indian Service Areas, contain many acres of scattered and isolated tribal trust lands, but are not defined by an exterior boundary. They enjoy the same recognition status as a Tribe

with a defined reservation boundary. In addition, there are many isolated parcels of tribal trust lands throughout the basin that are remnants of former or diminished reservations.

Tribes of the North Pacific Region

There are 62 Tribes located within the North Pacific Region. The geographic boundaries of Region include the Colville, Nez Perce, Salish-Kootenei of the Flathead Reservation, the Shoshone-Bannock of Fort Hall, Burns Paiute, Warm Springs, the Umatilla, the Yakama, Klamath Tribes, the Coos, Lower Umpqua and Siuslaw, and the twenty-two Puget Sound and Coastal Tribes. Their sovereign status includes Executive Order, Treaty, and Indian Reorganization Act, and recent recognition, such as the Cowlitz Tribe. Some tribal groups, such as the Northern Paiute peoples are outside the Region's boundaries, but have status within the Basin due to the extensive range of aboriginal territory. Therefore, Tribes which include the Fort McDermitt Paiute Shoshone Tribe, as well as the Northern Paiute of the Fort Bidwell Reservation and the Klamath Tribes of Northern California. Other Tribal groups like the Colville and Kootenei, have territories and extended relations across the U.S. Border in Canada.

CHAPTER II: WHY IS OUR RELATIONSHIP WITH TRIBES UNIQUE?

Federal Trust Responsibility

The Federal Indian Trust Responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (*Seminole Nation v. United States*, 1942). It was first discussed by U.S. Supreme Court Chief Justice John Marshall in *Cherokee Nation v. Georgia*, (1831). Over the years, the trust doctrine has been the center of numerous other Supreme Court cases. It is one of the most important principles in Federal Indian law.

The Federal Indian trust responsibility is a legally enforceable fiduciary obligation, on the part of the United States, to protect tribal lands, assets, resources, and treaty rights, as well as a duty to carry out the mandates of Federal law with respect to American Indian and Alaska Native tribes. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of dealings with the United States and the tribes.

Fiduciary Obligation: The Federal Government, using the highest standards, must protect and safeguard tribal cultural ways of life.

For more information contact:

The Department of Interior
Office of American Indian Trust
1849 "C" Street, N.W.
Washington, D.C. 20240
Phone: (202) 208-3338
Fax: (202) 208-7503
Internet <http://www.doi.gov/oaif>

Sovereignty

The Corps recognizes that tribal governments are sovereign entities—they retain inherent powers of government. This sovereignty is recognized in the U.S. Constitution along with that of the Federal government, state governments, and foreign governments. As sovereigns, Tribes have the power to establish a form of government, determine membership, legislate tribal laws and ordinances, and administer justice, among other powers. They also have the power of sovereign

immunity. Tribal sovereignty is a critical foundation for tribal rights to cultural and political survival.

Government-to-Government Relations

The relationship between the Corps of Engineers and Tribes is based on a government-to-government relationship. Tribes are separate governments, have their own form of governance, their own constitutions, their own elected leaders, their own governing councils, and courts. Tribes are not simply another public interest group. Furthermore Tribes, by treaty, law and executive order, have a higher legal status than states, counties, and municipalities. In the conduct of the Corps interaction with Tribes, we must be mindful of our responsibilities as a federal agency to consult with tribal governments in an honest, meaningful and respectful manner, in accordance with tribal process and protocol.

Policies, Principles and Regulations

Department of Defense (DOD) American Indian and Alaska Native Policy, 20 October 1998.

The principles set forth in the DOD policy and were established to guide interactions and working relationships. The principles included in the DOD policy are based on treaties, Federal statutes, executive orders, Federal policy, and input from tribes. The policy acknowledges and by addressing:

- Trust responsibilities;
- Government-to-Government Relations;
- Consultation; and
- Natural and Cultural Resource Protection.

CECW PGL No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes, 18 February 1998

The Chief of Engineers signed the Policy Guidance Letter in order to ensure that all Corps Commands adhere to principles of respect for Indian Tribal governments and honor our Nation's trust responsibility. As interim guidance, the Chief provided specifics by which our relationship with Tribes would be measured and focused. This guidance was issued in the form of U.S. Army Corps of Engineers Tribal Policy Principles. These principles were developed with the Office of the Assistant Secretary of the Army (Civil Works) and are consistent with goals and objectives the Presidential Memorandum of 29 April 1994, entitled Government-to-Government Relations with Native American Tribal Governments. The Corps Policy Principles are:

- Tribal Sovereignty;

- **Trust Responsibility;**
- **Government-to-Government Relations;**
- **Pre-Decisional and Honest Consultation;**
- **Self Reliance, Capacity Building, and Growth; and**
- **Natural and Cultural Resources.**

Northwestern Division Native American Policy Regulation, NWDR 5-1-1, 15 August 2001

The NWD Native American Policy establishes guidance for implementation of USACE Tribal Policy Principles and is applicable to all NWD Commands having military, civil works, and hazardous, toxic, and radioactive waste mission responsibilities. The policy is critical to the development of partnerships and enhancement of the Corps' working relationship with federally recognized Tribal governments. The NWD regulation establishes specific responsibilities for Division and District Commands, including the designation of Native American Coordinators.

CHAPTER III: WORKING IN INDIAN COUNTRY

Understand and be aware of the unique status of the Federally-recognized tribe.

Understand clearly what constitutes 'consultation'. (See Chapter IV)

Understand the relationship. Understanding the government-to-government relationship unique to Indian tribes is the first step in preparing for work in Indian Country. It is important to understand:

- Native American Indian Tribes are not "just another" racial minority, such as African Americans, Hispanic Americans, Asian Americans, and others.
- Tribes are not simply "stakeholders", like an interest group or interested party.
- Tribes, by treaty, law and executive order, have a higher legal status than states, counties, and municipalities.

Understand the organizational structure of the tribe. The appropriate contact within the tribe and your district is someone at approximately the same organizational level. Most tribes have technical staff, legal counsel, advisors and managers employed to administer tribal programs. These staff people can be invaluable professional contacts for communication, coordination, and public-involvement efforts commonly carried out between tribal government staff members and equivalent Corps employees. Policy decisions are made by the elected leaders of the tribe. Staff-to-staff work may precede or constitute government-to-government consultation.

Protocol. In diplomatic use, this term is defined by Websters New Universal Unabridged Dictionary as "the ceremonial forms and courtesies that are established as proper and correct in official intercourse between heads of states and their ministers". (Simon and Schuster, 2nd. Edition, 1988: 1448).

• Tribes as Sovereign Nations recognize you as a representative of the U.S. Government.

- Always be conscious of your conduct. Tribal cultures put great emphasis on judging character by one's actions, conduct and response.
- Meetings with tribal officials may start with words of spirituality, prayer or invocation. These prayers are intended to create a positive atmosphere that will lead to mutual understanding and a good outcome for all parties involved. U.S. government rules about separation of church and state do not apply to tribes; they, as sovereign nations, are free to follow their own cultural norms. Show respect for these tribal customs.

- Don't be judgmental about how tribal meetings are run. Tribes may conduct meetings using a blend of traditional and contemporary procedures. Don't be in a hurry and view agendas flexibly.
- Keep your voice to a moderate level. Speaking loudly may be misread as arrogance or "talking down" to those present.
- Be respectful of elders, whether they are in an official position or not. Tribes consider elders to be the repository for their cultural continuity and often the source of considerable intuitive wisdom.
- Do not use your hands while talking this may be considered disrespectful.
- Do not fold your arms during the meeting, this may be considered offensive (putting up a wall).
- Do not make eye contact unless the person makes eye contact with you first. Some tribes believe that you are trying to take power from their spirit.
- Don't interrupt someone who is speaking; provide your undivided attention. Your body language can be especially disruptive to the communication process, and actions such as shaking your head or raising your hand while a tribal elder or leader is speaking can be considered disrespectful.
- Corps terms, vocabulary, acronyms and standard operating procedures may not be familiar to a tribe. Use clear and recognizable references. Avoid agency "jargon."
- If uncertain about anything, talk to the Native American Coordinator.

CHAPTER IV: WHAT IS CONSULTATION?

“Consultation” is an ongoing relationship and process for initiating and carrying out dialogue between the Corps and Indian tribes regarding proposed and on-going Federal actions in a manner intended to secure meaningful and timely exchanges of information instigated by tribes and or the agency. Consultation includes:

- **Timely notification of the formulated or proposed Federal action;**
- **Exchange of information of the potential impact(s) on Indian tribes;**
- **Identification of those Federal officials who may make the final decisions with respect to the Federal action;**
- **Input and recommendations of Indian tribes on such proposed action be fully considered by those agency officials responsible for the final decision; and**
- **Notification of the Corps actions resulting from tribal input and recommendations in the decision making process.**
- **Tribes distinguish between formal and informal consultation: Formal being government to government (Division or District Commander meeting with Tribal Council); Informal being all other communications between technical and policy level staff.**
- **Each District should develop communication/consultation protocols for working with tribes within their respective commands.**

Consultation is a process not an event. Consultation provides a mechanism for seeking and incorporating tribal perspectives into the decision process. Consultation must be pre-decisional and should not be treated as an opportunity to “tell the tribe of the decision”.

Consultation definitions and understandings will come directly from the tribe you are working with. The following is an outline of guidelines for consultation.

Consultation Objectives and Issues

- **Brief discussion of objectives to be accomplished through consultation**
- **Identification of specific project/program issues requiring consultation**
- **Modification of issues during consultation with Tribes and others**

CHAPTER V: MANAGING CONSULTATION

Preparation

- Identify and distribute flow chart for key project milestones, meeting dates, comment periods, draft plan reviews, final plans, and decision dates
- Identify and budget for direct and indirect costs associated with consultation process
- Identify potential sources of support funding

Project Description

- Describe the federal action or proposed project
- Provide sufficient project detail for the Tribe(s) to determine an interest
- Identify project sponsors, proponents, lead agencies, and decision-makers
- Prepare a map of study or project area, including land ownership status
- Prepare an information packet

The project manager or designated team member should put together a brief information packet consisting of a description of the proposal, an initial list of issues and impacts, maps, drawings, and any other material or references that can help the interested tribes to understand what is being proposed and allows the tribe to establish their level of interest; time frame and allow other tribal representatives to participate in feasible and appropriate manner.

Identification of other possible participants as means to enhance communications

- Treaty councils (case-by-case: District Liaison will advise)
- Tribally-affiliated organizations
- Grassroots organizations
- Other parties as appropriate
- Tribes in process of recognition (case-by-case: District Liaison will advise)
- State recognized tribes

When to Consult

Consultation should be initiated as early in the Corps decision- making process as possible and should begin when the Corps knows enough about a proposed action to present a coherent proposal and a suggested initial list of issues. If you are uncertain whether any of the information is sufficient for consultation, contact the Native American Coordinator.

Initiating Contacts

- Letter to Tribal leadership initiating consultation process (to be signed by agency leadership (i.e. Division Commander or District Commander)
- Copies furnished to NAC and other Tribal offices or parties as appropriate
- Follow-up phone calls by Project Manager or other team member to Tribe confirming receipt of letters
- Identification of a point(s) of contact at each Tribe(s) and within the Corps

Legally required consultation: In several court cases, attempts at written correspondence have been considered insufficient demonstration of an agency's efforts to consult, unless accompanied by telephone and/or direct contact. To avoid false starts and delay, Corps managers and staffs should select a notifications strategy that has a high expectation of success.

Arranging Meetings

- Determine level of meeting—technical, policy, g2g
- Arrange face-to-face meeting(s) between Corps and Tribe(s), and others early, as appropriate
- Coordinate appropriate and convenient date and location for meeting
- Include appropriate representation from Corps, Tribe(s), and others (Commander, NAC, PM, technical staff – Tribal leadership, staff, etc.)
- Collaborate on purpose of the meeting (information sharing, project status, or decision meeting)
- Prepare and share advance agenda stating purpose, issues, participants
- Mutually agree upon follow up or action items
- Arrange future meeting dates and locations as appropriate

Without early consultation

The Corps may develop proposals based on an incomplete and anecdotal understanding of the issues that surround a particular matter. As a result, Corps proposals often create severe unintended consequences for tribal governments. Issues in Indian country are often more complex than they seem at first, in part because of the great diversity among tribes and the circumstances they face, as well as the long history surrounding the development of federal Indian policy.

With early consultation

Tribal governments on the scope and impact of a Corps proposal may provide the basis for the Corps to determine what action is appropriate. Pre-decisional consultation helps ensure that issues and opportunities are identified at the beginning and properly addressed; and that the lack of consultation may result in delays and increased costs.

When Should Consultation Occur?

- Before the Corps begins drafting proposed regulations;
- Before the Corps publishes proposed regulations in the Federal Register;
- Before proposed legislation is introduced at the request of the Corps; and
- Before the Corps formulates or implements policies or other actions having implications for tribes.

Who Should Consult?

Corps Participants.

- The District Commander or his designee* is only person who conducts government-to-government consultation. All other contacts by Corps employees will be considered technical consultation.
- Project Manager will identify the team members
- Provide the list of team members and contact information to the tribe(s)
- Native American Coordinators are available to assist and advise teams

*Designee will be confirmed in writing and his/her conformation will be sent to the Tribe(s) prior to government-to-government consultation.

Tribal Participants.

- Identify all the Federally-recognized tribes that might have an interest in the proposed project or undertaking
- For proposed federal action identified as regional or national in scope, identify the regional or national tribal organizations that may have expertise, and can facilitate dialogue with affected tribes, with respect to the proposed federal action; and
- after notifying all those potentially affected tribes identified under subsections a), b), and c) of this subsection, defer to the expressed views of the tribes regarding who the tribal participants shall be with respect to any consultation

Interagency Cooperation.

- The Corps will seek and promote cooperation and participation with other agencies that have jurisdiction over, special expertise with respect to, or related responsibilities regarding the Corps proposed legislation, action or policy.

Courtesy Notices

- Notice of public meeting and announcements of opportunities to review project, environmental documents should be provided to all Native Americans who have been identified as having, or may reasonable be expected to have, an interest in Corps activities and authorizations.

Documenting the Consultation

- Document all telephone calls, contacts, coordination activities, etc.
- Develop a thorough copies-furnished list to ensure complete coordination with all appropriate parties
- Prepare and distribute meeting summaries in a timely fashion to all appropriate parties
- Include all documentation in the official project files

Concluding Consultation

- Based on scope of issue, coordinate with Tribes the appropriate point of closure for the consultation
- Prepare and distribute letter of consultation outcome between the Corps and Tribal leadership
- Upon issuance of a Record of Decision (ROD) copies shall be sent via certified mail to all appropriate tribes.
- Negotiate agreement (i.e. MOA, CA, PA, etc.), as appropriate
- Jointly identify need for continued consultation

Length of the Consultation Process.

The Corps should, at the outset of the consultation process, solicit the views of affected tribes regarding how long the consultation process shall take. The Corps should make all reasonable efforts to comply with the expressed views of the affected tribes regarding the length of the consultation process, taking into account the level of impact, the scope and the complexity of the issues involved in the proposed federal action. Notwithstanding the overall time for the process, consultation should continue throughout the Corps' decision-making process, except where expressly prohibited by law. If the Corps determines that the Administrative Procedure Act or other federal law expressly prohibits continued consultation at a specified point in the decision making process, the Corps should so inform the tribes at the outset of the consultation process.

Implementation of Final Federal Action

Prior to finalizing a decision on a Federal action, the Corps shall address issues raised as priority matters during the consultation process in a meaningful and timely manner appropriate to the issue. Commitments or decisions affecting tribes will be documented in the Record of Decision. The Corps shall continue to consult

with tribes regarding the manner in which that decision is implemented, its benefits or impact on tribes, and any need for training or technical assistance on a new regulation or policy.

PROTECTING SENSITIVE INFORMATION

Native Americans may be reluctant to share sensitive information regarding resource locations and values with agency officials. This is partly because agencies have been hindered, until recently, from effectively protecting Native American cultural information from public disclosure under the Freedom of Information Act.

The 1992 Amendments to the National Historic Preservation Act provide, in Sec 101(d)(6) and 304(a), that:

Properties of traditional religious and cultural importance to an Indian tribe... may be determined to be eligible for inclusion on the National Register;

In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe... that attaches religious and cultural significance to properties described [above];

[Agency officials] after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic property if [they] determine that disclosure may (1) cause a significant invasion of privacy; (2) risk harm to the historic resources; or (3) impede the use of a traditional religious site by practitioners.

Broad information, regarding the general nature of traditional values and the general location of culturally significant traditional places, should be asked for in early planning stages. Going into consultation with knowledge about a group's historic relationship with the land and resources should enable managers to direct their questions in a sensitive and effective way.

Native American groups frequently withhold specific information, unless there is a direct threat to traditional values and culturally significant places.

Before making project-specific decision managers may need to provide additional opportunities for Native Americans to identify their specific concerns.

One of the greatest barriers to completely open consultation discussions is Native Americans' hesitation to divulge information about places that are considered to have a sacred character, or practices that are of a sacred or private nature. In some instances, reluctance to speak of such matters is strong enough to prevent information sharing altogether.

- We must exhibit a high degree of respect and sensitivity when elders or traditionalists convey privileged information about religious locations and practices.
- The extent to which we can limit the public's access to sensitive information must be addressed honestly and openly. We must not overstate our ability to protect sensitive information.

Limitations. When they are willing to share it at all, tribal officials and traditional practitioners frequently request that the Corps hold confidential specific information on the nature of traditional locations, traditional uses, and other matters integral to traditional practice. Examples are traditional plant gathering areas, vision quest stations, graves and cemeteries, re-internment locales, ceremonial sites, shrines, and sacred places.

The Freedom of Information Act (FOIA) allows the public to seek disclosure of Federal agency information. It also allows agencies to hold back some classes of material, but the Act generally limits agency discretion in favor of open public access.

"Working files," i.e., documents that are not formal products of the agency or official correspondence are not generally subject to release under FOIA requests (5 U.S.C. 552(b)(3)). Thus, raw ethnographic data and notes are excluded from release under FOIA requests.

This useful classification should not be overused or abused.

New amendments to the National Historic Preservation Act (Sec. 304(a)) have improved the Corps ability to protect more kinds of sensitive Native American information. However, some kinds of potentially sensitive information are still not explicitly exempt from public disclosure.

The 1992 Amendments to the National Historic Preservation Act allow Federal agency officials, with the concurrence of the Secretary of the Interior, to withhold information about the location, character, or ownership of a historic property (i.e., one included in or eligible for the National Register of Historic Places).

Under the NHPA, information can be withheld if disclosure might cause a significant invasion of privacy; risk harm to the historic resource; or impede the use of a traditional religious site by practitioners. These provisions broaden the Corps discretion to protect sensitive information, so long as it relates to distinct, fixed properties.

The Archaeological Resources Protection Act (Sec. 9 and 43 CFR Part 7) allows Federal agencies to protect archaeological resources from harm by restricting information on their nature and location.

Less tangible values, when they coincide in space with historic properties or archaeological resources, could also be protected from disclosure under these authorities. The confidentiality of information less firmly associated with a historic property or archaeological resource, however, is not resolved.

To summarize, the Corps can protect from FOIA disclosure sensitive Native American information that exists only in "working files"; or pertains to a property listed in or eligible for the National Register of Historic Places, if disclosure would risk harm to the property, cause a significant invasion of privacy, or impede the use of a traditional religious site by practitioners; or pertains to an archaeological resource as defined in 43 CFR Part 7, if disclosure would risk harm to the resource.

Managers and staffs carrying out Native American consultation should clearly represent the sort of information they seek, the purposes to which the information will, and will not, be applied, and the limits of the Corps ability to protect the information from public disclosure. The extent of that ability must not be misrepresented.

All sensitive data should be carefully maintained and securely stored. Offices responsible for gathering sensitive information and conducting consultation should have adequate physical and procedural means to ensure secure file maintenance and management.

APPENDICES:

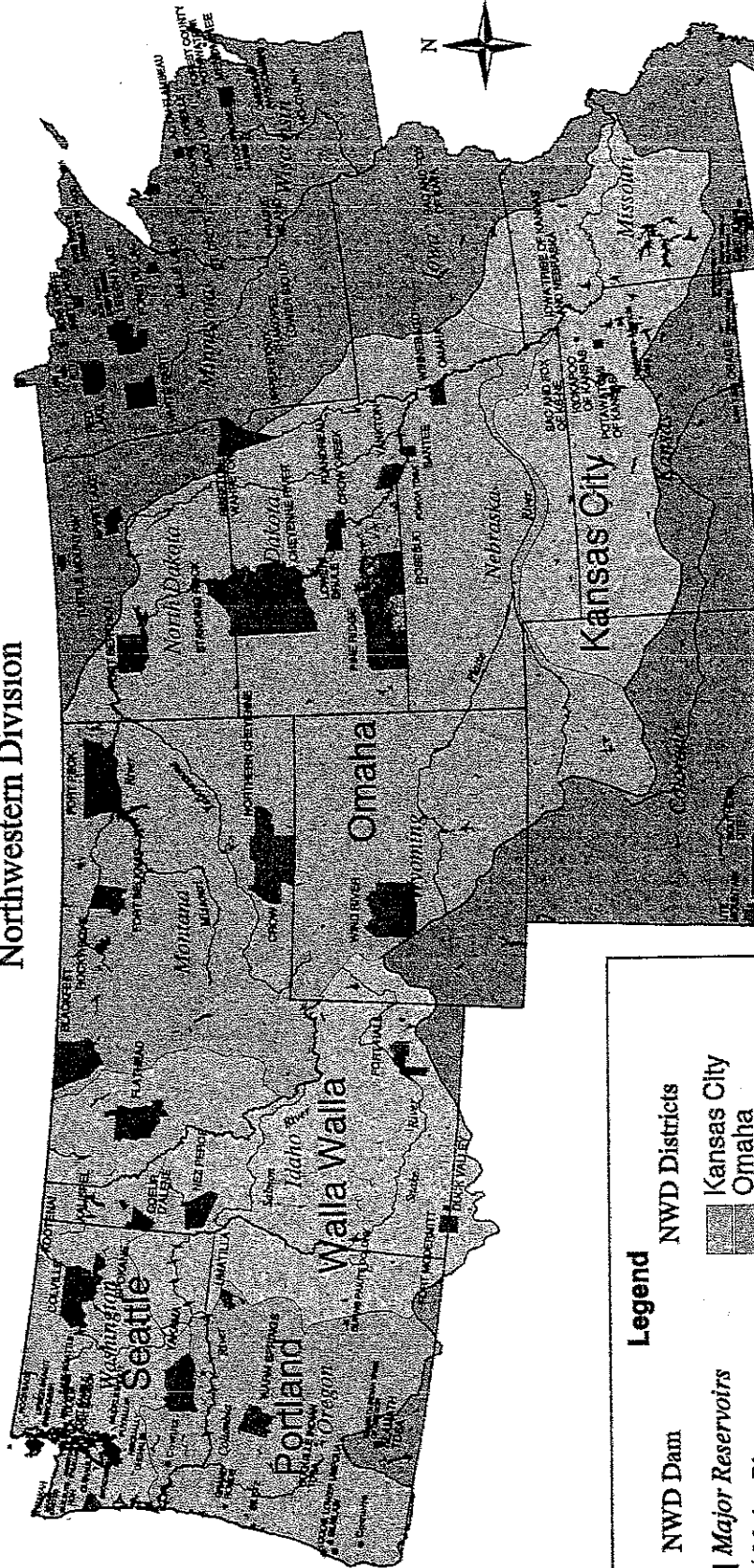
A. MAP ROOM

web links: Maps of the NWD, including reservations.
 Maps of each District, including reservations
 [Http://www.wes.army.mil/el/ccspt/natamap/usa_bg](http://www.wes.army.mil/el/ccspt/natamap/usa_bg)
 Other maps or sources, as appropriate

American Indian Reservations

US Army Corps of Engineers

Northwestern Division



Legend

- NWD Dam
- Major Reservoirs
- Major Rivers
- Indian Reservations
- NWD Civil Boundary
- NWD Military Boundaries
- NWD Districts
- Kansas City
- Omaha
- Portland
- Seattle
- Walla Walla
- NWD Military
- March, 2002



US Army Corps
of Engineers
Northwestern Division

B. TREATY ROOM

<http://digitallibrary.okstate.edu.kappler/>

Note: BIA links out of service

<http://www.nara.gov/publications/microfilm/amerinds/indians>

C. INDIAN LAW ROOM

Indian Law is one of the most complex areas of the law. It is also of vital importance to those Engineer Districts with both intensive and extensive Native American involvement in their projects. Portland District has such involvement, particularly because 4 of the 1855 treaty tribes have their off-reservation treaty rights on the reservoirs behind Bonneville, The Dalles, and John Day Dams. These treaty rights make the 4 tribes the District's partners in the operation and maintenance of these projects.

This document contains a brief summary of some of the key areas of Indian law, followed by appendices. The first appendix is a description of how Oregon and the CTUIR have integrated their judicial systems in the Pendleton, Oregon area. The next 2 appendices are selected excerpts from US Forest Service publications used here in USFS Region 6, collocated with Portland District in the Duncan Plaza Bldg., Portland, Oregon. The last appendix is a copy of a draft legal opinion concerning Portland District and tribal dealings and rights in connection with Bonneville, The Dalles, and John Day Dams. As is obvious from the opinion, the interaction of the District and the tribes has not always been smooth or proper, and ongoing remedial programs must deal with a very extensive legal history set forth in the opinion.

This document draws heavily on other sources, including Forest Service publications and Oregon State Bar Indian Law Section publications.

This document is intended to be only an initial briefing on this complex subject, touching on only some of the most basic legal issues.

I. INTRODUCTION

The Constitution

The 1787 (ratified by original 13 States by May 1790) US Constitution, Article I, Section 8, provides in the second proviso that

Congress shall have Power . . .

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

The US Supreme Court has consistently held that this clause gives the Congress the exclusive right to legislate and otherwise direct Indian affairs within the United States.

Chief Justice Marshall authored 3 important early opinions: *Johnson v. M'Intosh*, 21 US (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia*, 30 US (5 Pet.) 1 (1831), and *Worcester v. Georgia*, 31 US (6 Pet.) 515 (1832). *Johnson* stated the "Discovery doctrine" that gave Congress the exclusive right to extinguish original tribal possession rights without compensation. *Oneida Indian Nation v. County of Oneida (Oneida I)*,

414US 661, 39 L Ed 2d 73, 94 S Ct 772 (1974), and *County of Oneida v. Oneida Indian Nation (Oneida II)*, 470 US 226, 84 L Ed 2d 169, 105 S Ct 1245 (1985) restated this Discovery doctrine. The Supreme Court also held that any abrogation of treaty rights has to be by explicit statutory language, *Oneida II* at 470 US 246; *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.*, 443 US 658, 690, 61 L Ed 2d 823, 99 S Ct 3055 (1979).

Cherokee Nation first stated the principle that tribes are legal dependents of their Federal guardian. *Worcester* stated that the principle that tribes are sovereigns, to whom state law does not apply without their consent.

History of National Congressional Indian policy

The history of Congressional Indian policy is the story of consistent inconsistency, as Congress changed policy again and again.

Since the several hundred Indian tribes were dealt with as the Nation expanded, the inconsistency of federal Indian policy means that the tribes' legal history is individual and distinct to each separate tribe. Indian law is a combination of some general history and general laws with the particular treaties and laws for each separate tribe.

Pre-1790 Indian policy

The Indian tribes in the original 13 Colonies/States were dealt with prior to the current Constitution. The treatment of the tribes varied from colony to colony, with the most common result being that most of the tribes were exterminated one way or the other. Today, the surviving tribes are found in the Northeast (New York, Connecticut, Rhode Island, Massachusetts, and Maine) and in a few small areas in Virginia and North Carolina.

The 1790's

In the 1790's, Congress passed a series of Trade and Intercourse Acts to exercise federal control over the tribes:

Non-Intercourse Act of July 22, 1790 (1 Stat. 131; 18 USC 1511 ff.) [exercised federal jurisdiction over tribes and forbade States to do likewise];

Trade and Intercourse Act of March 1, 1793 (1 Stat. 3.29) [provided for sale of Indian lands];

Trade and Intercourse Act of May 19, 1796 (1 Stat. 469) [established Indian country; provided for boundary changes by treaty];

Trade and Intercourse Act of March 3, 1799 [similar to 1796 act].

In 1802 Congress amended the law again with the Trade and Intercourse Act of March 30, 1802 (2 Stat. 139).

In the Act of May 18, 1796 (1 Stat. 464), Congress established the public land survey system in the United States, using rectangular units for the sale of public lands. The "old Northwest" – Ohio and the area north of the Kentucky River – was directed to be surveyed for public land sales.

1802 – 1871 Military conquest

For the Indian tribes in the "old Northwest" that sided with the British in the War of 1812, American victory brought loss of lands. This was the continuation of the taking of Indian lands by military victory and compelled treaties as White settlement of the continent continued.

The Indian Removal Act of May 28, 1830 (4 Stat. 411; 25 USC 174) enabled presidents to remove tribes east of the Mississippi River to lands west of the Mississippi River. Under this statute, most of the tribes east of the Mississippi were driven west or exterminated.

The Trade and Intercourse Act of June 30, 1834 (4 Stat. 729) redefined Indian country to its then current scope and limited the taking of Indian lands to treaty or convention ratified by Congress.

In 1848, the United States ended the Mexican War with a treaty that recognized Spanish and Mexican land-grants, but in practice led to the States of Texas and California seizing whatever Mexican and Indian lands they wanted, often through fraud and extortion. California denied Indians citizenship rights and title to property received in Mexican land grants, contrary to the provisions of the Treaty of Guadalupe Hidalgo (1848). The California Indians, with the exception of some northern tribes along the Klamath River, never received back any significant portion of the land stolen from them.

In the same period, the tribes of Western Oregon pretty much had their lands taken from them, as did many other tribes in the western expansion of the country.

In 1855, the newly-appointed Washington Territorial Governor, as one of his first acts, traveled the Washington Territory with the Oregon Territory's Indian manager, entering into a series of similar 1855 treaties with the tribes of the Columbia River Basin and Puget Sound. These treaties generally reserved off-reservation treaty hunting and fishing rights. The ensuing Indian wars ended around 1870.

The Indian Appropriations Act of March 3, 1871 (16 Stat. 566; 25 USC 71) ended the president's power to enter into treaties with tribes. Thereafter tribal reservations were created by agreements, statutes, and executive orders.

389 treaties were negotiated, signed, and ratified prior to the 1871 cutoff. 60 of these treaties conferred reserved rights on federal lands. The courts have generally interpreted treaty rights broadly and elimination of these rights narrowly. See *Fishing Vessel Assn.*, above, for an example of how reserved off-reservation treaty fishing rights have been

converted to a 50% share of the fish harvest by the federal courts. As noted above, Congress retains the right to abrogate Indian treaty rights, *Lone Wolf v. Hitchcock*, 187 US 553 (1903).

1871 – 1912 Transition Period: Original Allotment Statutes; End of Westward Expansion

The Major Crimes Act of March 3, 1885 (23 Stat. 362; 18 USC 1153) first applied federal criminal jurisdiction to major felonies in Indian country.

The Dawes Act of Feb. 8, 1887 (24 Stat. 388; 25 USC 331) first authorized the assignment of Indian lands by allotment to individual Indians. This failed assimilation statute transferred over 80 million acres of Indian lands into private ownership, where many of the lands were quickly sold to non-Indians. This statute first made US citizenship available to Indians taking allotments.

The Act of March 3, 1891 (26 Stat. 1035; 16 USC 471) established a court of private land claims to deal with Spanish and Mexican land grant claims in Colorado, Nevada, and Wyoming; and all claims in Arizona, New Mexico, and Utah.

The Allotment Act of June 25, 1910 (PL 313; 36 Stat. 855; 25 USC 331 ff.) amended the Dawes Act and provided allotments for Indians living on or improving National Forest land.

1912 saw the admission of the last 2 states in the Continental United States. Their admission ended a century of expansion west.

1912- 1949 Closing Out the Past

The Indian Citizenship Act of June 2, 1934 (PL 175, 43 Stat. 253; 8 USC 1401(b)) granted US and state citizenship to all Native Americans for the first time.

The Act of June 7, 1924 (PL 254, 43 Stat. 636 ff., 28 USC 111) established the Pueblo Lands Board so that non-Indians could validate their title to previously acquired Pueblo lands.

The Indian Reorganization Act of 1934 (PL 383, 48 Stat. 984, 25 USC 461-462) (1) ended allotments in severalty (multiple owners); (2) gave the Secretary of Interior the authority to acquire lands for Indians inside and outside of reservations; and (3) allowed tribes to reorganize and adopt bylaws approved by the Secretary of the Interior. 181 tribes accepted reorganization under this act, but another 77 rejected reorganization as another unwanted interference in tribal affairs by the Federal Government.

The Indian Claims Commission Act (ICCA) of Aug. 13, 1946 (PL 725, 60 Stat. 1049 ff; 25 USC 70-70v) established the Indian Claims Commission to give the tribes justice for all past offenses, prior to Aug. 13, 1946. The ICCA authorized relief for claims in law or equity, arising under the Constitution, laws, treaties of the United States, and all other claims in law or equity, and claims based upon dishonorable dealings not recognized by any existing rule of law or equity. Over the next 3 decades, the Commission heard and tried all of the tribes' claims for past wrong-doings to the tribes and awarded money damages to the tribes that were deposited in Judgment funds for each tribe. This was not a full remedy as tribes did not get lost lands and resources back. Moreover the damage awards were offset by a number of factors. But it did bring to a judicial close claims for past injuries and damages. The Commission was abolished in 1978, and all pending cases transferred to the Court of Federal Claims. Some are still pending 50 years later.

1950 – 1960 The Last Gasp of Assimilation

The last and probably final attempt at assimilation of Native Americans into the dominant non-Indian culture lasted for 8 years during the Eisenhower Administration. Secretary of Interior McKay, former Oregon governor, obtained the passage of the Act of Aug. 15, 1953 (PL 90-280; 67 Stat. 588; 18 USC 1360) which gave California, Minnesota, Nebraska, Oregon, and Wisconsin jurisdiction over tribal reservations for both criminal and civil purposes. In Oregon the Warm Springs Reservation was exempted from this state jurisdiction.

Other states were also subsequently given state authority over tribes for some or all purposes: Alaska (all purposes); Arizona (air and water control only); Florida (full criminal and civil jurisdiction over Indians); Idaho, Iowa, Montana, Nevada, and Utah (criminal and civil jurisdiction, as well as child abuse, neglect, and certain domestic matters); Washington (limited jurisdiction), North Dakota (civil jurisdiction if tribes consent – none have), South Dakota (limited civil jurisdiction), New York and Kansas (limited jurisdiction).

This act also terminated the federal recognition and benefits to a large number of tribes, including:

All Western Oregon tribes, including the Siletz, Grand Ronde Community, Cow Creek Band of Umpqua, Confederated Coos, Lower Umpqua, and Siuslaw Indians (all have subsequently regained recognition, but not lost reservations);

Klamath, Modoc, and Yahoosking Band of Snake Indians of Oregon (Klamath have regained some recognition);

40 California Indian Rancherias (32 have been restored);

Mixed Blood Ute Indians of Uintah and Ouray of Utah;

Paiute Indian Tribe of Utah;

Ponca Tribe of Nebraska;

Alabama and Coushatta Tribes of Texas;

Menominee Tribe of Wisconsin (regained some rights);

Ottawa Tribe, Peoria Tribe, and Wyandotte Tribe – all of Oklahoma;

Catawba Indian Tribe of South Carolina.

1961 – 2002 The Self-Determination Era

While policy changed with start of the President Kennedy's term in 1961, it wasn't until the Indian Civil Rights Act of April 11, 1968 (PL 90-284, 82 Stat. 77, 25 USC 1301 ff.) that the statutory rollback started. This act extended the protections of the Bill of Rights to tribes, tribal governments, and tribal members on the reservations for the first time, as well as allowing states to "retrocede" the state jurisdiction over reservations given them in PL 90-280.

The Alaska Native Claims Settlement Act (ANCSA) of Dec. 18, 1971 (PL 92-203, 85 Stat. 688, 43 USC 1601 ff.) extinguished aboriginal title in Alaska, as well as aboriginal hunting and fishing rights, and transferred 44 million acres to Alaska Native owned and controlled state-chartered corporations. The effect of this act was to create a separate body of Indian Law for Alaska.

Menominee Restoration Act of Dec. 22, 1973 (PL 93-197, 87 Stat. 770, 25 USC 899) provided for continuation of tribal hunting and fishing rights, without any Wisconsin state law restrictions, after the Menominee were disestablished as a federally-recognized tribe for other purposes and otherwise subjected to state laws like non-Indians.

Indian Self-Determination and Education Assistance Act of Jan. 4, 1975 (PL 93-638, 88 Stat. 2203, 25 USC 450 ff.) provided for transfer of administration of federal Indian programs to tribal administration and control, effectively moving tribes from dependent status to independent, self-managing status.

American Indian Religious Freedom Act of Aug. 11, 1978 (PL 95-341, 92 Stat. 469, 42 USC 1996) explicitly recognized the importance of traditional Indian religions and practices and directed all Federal agencies to insure that their policies will not abridge the free exercise of Indian religions.

Indian Child Welfare Act of Nov. 8, 1978 (PL 95-608, 92 Stat. 3969-3084, 25 USC 1901-1961) regulates the adoption of Indian children and requires that most adoptions and guardianship cases be held in tribal court. The act also established a preference for Indian guardians over non-Indian guardians for cases tried in state courts.

Native American Graves Protection and Repatriation Act (NAGPRA) of Nov. 16, 1990 (PL 101-601, 104 Stat. 3048, 25 USC 3001-3013) provided for the inventory and repatriation to tribes of bodies, funeral artifacts, and other specified archeological items belonging to the tribes. The act also provides safeguards for future inadvertent discoveries of Indian bodies, funeral artifacts, and specified archeological items belonging to tribes.

Status of Corps – Tribal Relationships in 2002

Corps-wide

President Clinton issued several Executive Orders directing each federal agency to directly deal with the tribes its programs affected. On October 20, 1998, the Department of Defense (DOD) followed this up with an unpublished policy letter. CECW PGL No. 57, Indian Sovereignty and Government –to-Government Relations with Indian Tribes was issued on February 18, 1998 by the Chief of Engineers.

Generally, federally-recognized Indian tribes are qualified sponsors for most civil works programs, including several designated tribal assistance programs.

The Corps Institute for Water Resources has just published IWR 01-PS-3, a report on Tribal Partnership Program, January 2002. The report focuses on Sec. 203 Tribal Partnership Program study authority, recently given the Corps in the Water Resources and Development Act (WRDA) 2000. The report suggests ways that the Corps implement the new study authority to assist tribes.

Northwestern Division

In Northwestern Division, there is a wide variety of tribes and legal relationships. Generally, the tribes of the Great Plains and the Missouri River Basin have a different legal history than those of the Columbia River Basin and the Pacific Northwest.

In the Columbia River Basin and the Pacific Northwest, the most significant divisions among the tribes in terms of impacts and relationships with the Corps are: (1) 1855-treaty tribes; (2) non-1855-treaty tribes never de-recognized or terminated; and (3) non-1855 treaty tribes who were at one time de-recognized or terminated but are now re-recognized.

1855-treaty tribes in Idaho, Oregon, and Washington have significant off-reservation hunting and fishing rights, governed by 7 Supreme Court cases.

Non-1855 treaty tribes that were never de-recognized or terminated still have the same reservations they were given decades ago.

Non-1855 treaty tribes that were formerly de-recognized or terminated generally have lost most of their original reservations. Some have tiny reservations. Others have no reservations. Most of these tribes are in Oregon, and were terminated in 1952-1953.

In addition there non-federally-recognized tribes, whose concerns are usually presented through recognized-tribes.

There are also several tribes whose reservations constitute all or part of civil works projects. Each of these situations has its own history and relationships.

Portland District

Western Oregon and Washington and Oregon-California Border

Slowly many of the terminated tribes in 1952-1953 are being re-recognized.¹ In addition new tribal groups are gaining federal recognition for the first time. This means change for the near future. None of these tribes have reservation lands adjacent to any current civil works projects. However, their interests are impacted by some of the river basin civil works study projects currently authorized.

South Central and Southeastern Oregon

There are 2 small reservations, one near Burns, Oregon, and the other on the Oregon-Nevada border for Paiute. Neither is adjacent to any current civil works project. Both groups are small and poor, and appropriate candidates for any available federal and state assistance programs.

Mid-Columbia River Basin Tribes

The most significant tribal relationships in Portland District in 2001 are the Mid-Columbia River Basin 1855 treaty tribes, who have treaty fishing rights that, by prior federal actions, lie exclusively in the reservoirs behind Bonneville, The Dalles, and John Day Dams. These fishing rights effectively make the Confederated Tribes and Bands of the Yakama Indian Nation (YIN), the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the Confederated Tribes of the Warm Springs Reservation (Warm Springs) partners of the Portland District and the Northwestern Division in the operation of the three listed Corps dams.

In addition, these tribes have extensive rights on other waters as well. The Nez Perce is a statutory partner of Walla Walla District in the operation of the Lower Snake River Mitigation Program in Idaho adjacent to their reservation. The YIN have significant

¹ Klamath Tribe, 25 USC 566 ff.; Siletz Tribe, 25 USC 711 ff.; Cow Creek Band of Umpqua, 25 USC 712 ff.; Confederated Tribes of Grand Ronde Community of Oregon, 25 USC 713 ff.; Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, 25 USC 714 ff.; Coquille Tribe, 25 USC 715 ff.; additional relief, Indian Tribes of Oregon, 25 USC 771 ff.; Hoopa-Yurok Settlement, 25 USC 1300i ff.

statutory rights on other water ways that are tributaries to the Columbia River in the State of Washington and within or adjacent to their reservation. The Warm Springs have significant water rights connected to their reservation on the Deschutes River and tributaries in Oregon. The CTUIR have extensive rights and interests in the Columbia River and Umatilla River adjacent to their reservation.

The relationships between these tribes and Portland District civil works projects on the Columbia River is very complex, involving a relationship that extends back to 1871 when Portland District was formed and continuing through a host of civil works projects and programs that are still ongoing. A Legal Appendix, prepared for the Celilo Village Post-Authorization Change Report (2002), provides the details of this complex 131 year history of Portland District projects and Columbia River treaty fishing rights, as well as discussing the Supreme Court cases which established the treaty fishing rights' legal interpretation. The appendix was prepared in support of a request for corrective legislation.

NAGPRA and Other Cultural & Archeological Partnering Processes

In addition to the treaty fishing rights, the operation of the District's Columbia River dams continues to cause the occasional erosion of ancient tribal burial sites along the river, triggering the inadvertent discovery provisions of NAGPRA. Also, in connection with the construction of the District's dams, other tribal archeological materials and bodies were discovered.

To comply with NAGPRA and to provide a workable means to resolve and avoid inter-tribal disputes over which of the 3 tribes with ceded lands in the Mid-Columbia River Basin has priority of title to various archeological materials and human remains, Portland District and the affected tribes have agreed to a combination of formal and informal working relationships in which significant portions of past archeological collections are curated in tribal museums. The curation agreements generally provide that title to the collections remains in the United States due to the practical impossibility of identifying in most case which of the tribes has the best claim to the collections. In addition, there is an informal agreement that the tribes and the Corps, as well as other appropriate federal, state, and local agencies, will promptly reinter ancient human remains that are eroded along the banks of the Columbia River. The State of Oregon has a "Little NAGPRA" statute that facilitates cooperation on the Oregon side of the Columbia River.

There is also a joint federal-tribal-state working group to provide for continued cooperation in federal compliance with federal and state archeological laws.

Other District-tribal-Oregon relationships

Federal law provides a wide range of opportunities for federal-state-tribal cooperation and mutual assistance. Portland District is continuing to work towards maximizing the opportunities and cooperation, as well as assisting the tribes in getting the most benefit out of federal and state programs for their benefit. The fact that the State of Oregon has

its own progressive Indian programs and actively seeks to assist the tribes in improving their economic welfare provides a trilateral tribes-state-federal partnering environment rich in opportunity for all concerned.

The tribes with rights and lands in Portland District will continue to be significant and important "customers" of the Portland District's various civil works projects.

Non-Corps Tribal Relationships

Oregon State Bar Indian Law Section

One of the more important regional forums for working out the many legal complexities and inconsistencies among federal, state, and tribal laws and regulations is the Oregon State Bar's (OSB) Indian Law Section. The Section provides continuing legal education (CLE) in tribal law matters as well as in conflicts of laws issues.

Jurisdiction

FEDERAL COURTS:

Federal courts are courts of limited jurisdiction. Authority over Indian matters is limited to specifically authorized subjects.

Federal Criminal Law:

Indian reservations are generally considered federal lands within the special maritime and territorial jurisdiction of the United States as defined in 18 USC 7.

18 USC 13, the Assimilative Crimes statute, generally adopts state law as a substitute to fill the vacuum where federal law fails to provide criminal law coverage on federal lands.

18 USC 1151 defines "Indian country" to include Indian reservations, other dependent Indian communities, and all Indian allotments.

18 USC 1152 generally provides that federal criminal law extends to Indian country. This section excludes from its reach: offenses committed by one Indian against another, both personal and property offenses, nor does it reach any Indian committing any offense in Indian country who has been punished by local tribal law. Also excluded are any other exclusions provided for by treaty.

18 USC 1153 makes most common law felonies punished elsewhere in Title 18 USC applicable to Indian reservations, in effect overriding 18 USC 1152 for most major crimes committed by Indians (or anyone else) on reservations. 18 USC 1153 also duplicates the Assimilative Crimes statute (18 USC 13) by adopting state criminal law where federal criminal law has a void.

18 USC 1154-1156 are special criminal statutes prohibiting the introduction of alcohol in Indian country.

Civil Law:

The first issue in civil law is always whether the parties have waived their sovereign immunity to suit in federal court. This requires an examination of statutes, ordinances, and documents pertaining to the matter at issue. Federal agencies, tribes, and state and local governments all have certain sovereign immunity protections.

The second issue is whether appropriate federal, tribal, and/or state law confers jurisdiction on the proposed court for the proposed subject matter. This is always a complex matter.

Federal Statutes:

28 USC 1331 provides jurisdiction in federal district courts to resolve civil suits arising under the Constitution, laws, or treaties of the United States.

28 USC 1332 provides for diversity jurisdiction in federal district courts where the amount in controversy exceeds \$75,000.

28 USC 1333 provides exclusive jurisdiction in federal district courts for admiralty and maritime cases.

28 USC 1334 provides exclusive jurisdiction in federal courts for bankruptcy matters.

28 USC 1353 provides jurisdiction in federal district courts to resolve disputes involving Indians over ownership of Indian allotments.

28 USC 1362 provides federal district court jurisdiction for suits brought by the governing bodies of federally-recognized tribes for cases arising under the Constitution, federal law, or treaties.

Other provisions of Title 28 USC also provide for federal court jurisdiction.

STATE LAW:

Criminal Law:

18 USC 1162 is where PL 90-280 is codified, in which certain states were given back in 1953 state jurisdiction over crimes on Indian reservations, including Alaska (except Metlakatla Indian community on Annette Islands), California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except Warm Springs Reservation), and

Wisconsin. Sections 1152-1153 above are not applicable in these states where state law applies.

Civil Law:

28 USC 1360 is where PL 90-280 is codified, in which certain states were given back in 1953 state jurisdiction over all civil matters involving Indians on Indian reservations or in other Indian country, whereby Indians are treated like any other private citizens. These states include Alaska, California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except Warm Springs Reservation), and Wisconsin. Certain restrictions apply. Nothing in this section authorizes the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. Nor is any regulation on the use of such Indian property authorized in a manner inconsistent with any Federal treaty, agreement, statute, or regulation made pursuant thereto. Nor does this statute confer on states jurisdiction to adjudicate, in probate proceeding or otherwise, the ownership or right to possession of such property or any interest therein. Tribal ordinances shall, if not inconsistent with any state law, be given full-force and effect in the determination of the civil causes of action pursuant to this section.

Retrocession of Rights by States:

Congress in 25 USC 1323 has authorized states to retrocede their rights back to the states in a process requiring Secretary of Interior acceptance of state retrocessions. Since this is a tribe-by-tribe, state-by-state process, it has caused more confusion and lack of uniformity in Indian law. The practical impact of this section is that each state now has the legal power to make its own state-tribal agreements, and many states have chosen to do just this, including Oregon and Washington.

TRIBAL COURTS

Congress has recognized and supported tribal governments' and tribal courts' governance over their own members, providing a Model Code (25 USC 1311) and an Indian "Bill of Rights" (25 USC 1302) to guide such actions.

THE BOUNDARIES AMONG FEDERAL, STATE, AND TRIBAL JURISDICTION

Congress has left it to case law to establish the jurisdictional boundaries among the federal courts, the state courts, and the tribal courts. The law in this area is consequently still developing and very complex. Persons needing information in this area should check the latest case law out of the Supreme Court and the Circuit Courts of Appeal for the areas of concern.

COMMERCIAL RELATIONS

Congress still has on the law books numerous laws restricting the ability of tribes and individual Native Americans to dispose or alienate tribal property, allotments, and other federal trust properties. In addition numerous statutes require Secretary of Interior approval of tribal contracts (see 25 USC 81 (7 or more years encumbrance of real property), 25 USC 82 (attorney contracts), 25 USC 85 (contracts involving tribal funds or trust property), 25 USC 261 ff. (anyone trading with Indians needs Interior Dept. approval), 25 USC 381 ff. (Indian irrigation has to be provided only by Interior Dept.)

D. COMMUNICATIONS

NWD Points of Contact.

Division Commander, BG David Fastabend, 503-808-3700
Deputy Division Commander, Col. Daniel Krueger, 503-808-3701
Native American Program Office: Lynda Walker, 503-808-3715;
lynda.l.walker@usace.army.mil
Cultural Resources: John Tyger: 503-808-3861
Office of Counsel: Rebecca Ransom: 503-808-3762

E. DISTRICT PROFILES and CONTACTS

Kansas City (NWK)

Kansas City District Points of Contact

District Commander, Col. Donald Curtis, 816-983-3201

Native American Program Office : Kimberley C. Oldham, 816-983-3100;

kimberly.c.oldham@usace.army.mil

NAGPRA Coordinator 816-983-3107

Omaha (NWO)

Omaha District Points of Contact

District Commander: Col. Uhbelohde, 402-221-3900

Native American Program Office: Pem Hall 402-221-3988;

pem.j.hall@usace.army.mil

District Archaeologist 402-221-3110

Portland (NWP)

Portland District Points of Contact

District Commander: Col. Randall Butler, (503) 808-4500

Native American Program Office—(503) 808-4508: lynda.l.walker@usace.army.mil

Deputy for Program Management—(503) 808-4300

Environmental Resources Manager—(504) 808-4700

District Archaeologist—(503) 808-4766

Seattle (NWS)

Seattle District Points of Contact

District Commander: Col. Ralph Graves, 206-764-3690

Native American Program Office: Tommye Owings 206-764-3625,

tommye.e.owings@usace.army.mil

Walla Walla (NWW)

Walla Walla District Points of Contact

District Commander: LTC Richard Wagenaar, 509-527-7100

Native American Program Office: Bill Mellick 509-527-7107;

bill.s.mellick@usace.army.mil

F. OTHER PROGRAM CONCERNS

Cultural Resources

Particular known areas of concern to the tribes are as follows:

- National Historic Preservation Act (NHPA) Sec 106 Tribal Consultation
 - Native American Graves Protection and Repatriation Act (NAGPRA)
 - Inadvertent Discoveries
 - Claims
 - Repatriation
 - Disposition of Human Remains, Associated Funerary Objects, and Objects of Cultural Patrimony
 - Curation of Archaeological Collections (36 CFR 79)
 - Archaeological Resources Protection Act (ARPA)
- Historic Properties Management Plans, which guide all protection and preservation activities

Emergency Management

Tribes, as Sovereign Nations, can declare emergencies and request assistance from the Corps of Engineers, similar to States and local governments.

Resource Management

Tribes have an inherent interest in all aspects of natural resource management activities involving such issues, but not limited to, ESA, Clean Water Act, navigation, habitat enhancement

OMAHA DISTRICT
DRAFT
CONSULTATION OUTLINE

Draft CONSULTATION OUTLINE

Federal agencies and Tribes acknowledge the requirement, the value and the necessity of meaningful consultation. Numerous Federal laws, regulations, Executive Orders, and policies reference consultation in a general fashion, but there are no agreed upon definitions or procedures for the practice of consultation.

This format provides a minimal level of interaction to establish a process and guidelines for meaningful consultation that would be recognized and followed by the Omaha District. Responsibilities for consultation will be met and shared between the District and the appropriate Tribes. Coordination and cooperation will be the foundation.

The guidelines are not intended to replace specifically mandated consultation requirements, such as those identified in the National Historic Preservation Act or the Native American Graves Protection and Repatriation Act implementing regulations. Rather, they would provide a framework for implementing those requirements.

GOALS FOR CONSULTATION

- Initiate consultation at the very beginning of the planning process (*cannot be emphasized enough*).
- A formal, mutually agreed upon process for communication and coordination based on meaningful participation and interaction, with identified procedures and shared responsibilities.
- Government-to-government level of interaction consistent with the spirit and the letter of laws, regulations, Executive Orders and policies, established protocols, and based on mutual respect
- A commitment to acknowledge and follow, at a minimum, certain guidelines, practices, and procedures
- Recognition by all parties that the guidelines satisfy the intent and process for adequate consultation

ABSTRACT

There are four distinct phases to the consultation process. They are: Preparation, Initiating Consultation, Consultation, and Documentation. Each of these has specific activities that need to be completed to ensure that the consultation process will move forward with the assurance that the specific tribal government's rights and concerns are considered.

PREPARING FOR CONSULTATION

- Identify key project milestones, comment periods, draft plan reviews, final plans, and decision dates with project team.
- Identify each tribe and tribal organization that needs to be included in the consultation process, including:
 - Federally-recognized tribes
 - Treaty councils
 - Tribally-affiliated organizations
 - Grassroots organizations
 - Other parties as appropriate
 - Develop a thorough copy-furnished list to ensure complete coordination with all appropriate parties
- Prepare briefing document for Corps officials and Corps team members to include:
 - Tribal infrastructure and organization of tribal government
 - Tribal Council Members
 - Districts on the Reservation
 - Land Base
 - Short history of relationship with the Corps
 - Amount of land lost to Pick/Sloan
 - Key issues that may surface around historic issues.
 - Include positive outcomes of Pick/Sloan
 - Include info on ongoing projects with Tribe and positive outcomes
 - Include information on ceremonial and meeting protocols and what is expected of participants
- Identify scheduled regional tribal meetings and conferences with their dates and meeting places.
- Develop and coordinate preliminary project-specific consultation plan, based on Omaha District Consultation Plan Framework. This plan is later amended if necessary after consultation begins or if people/conditions change.
- Identify and budget for direct and indirect costs associated with consultation process

INITIATING CONTACT

The initial contact should be by telephone to notify the tribe that a letter and materials will be coming, to provide a first introduction to the project, and to gather any preliminary information regarding an initial POC, potential issues, schedule of Tribal meetings, etc.

- Corps PM or designee calls each Tribal Chairman. If unavailable, speaks to Executive Officer or Administrative Officer.
- Introduces self and states that we will be initiating consultation.
- Briefly describe project.
- Describe letter initiating consultation and materials that will be coming, and when they should receive it.
- Request POC for the Tribe for preliminary exchange of information on the project.
- Request for identification of other Tribal Officials who should receive copy-furnished and materials.

CONSULTATION

Written

- Letter to Tribal leadership initiating consultation process (to be signed by agency leadership (i.e. Division Commander or District Commander). Letter should include:
 - Describe the federal action or proposed project
 - Provide sufficient project detail for the Tribe(s) to determine an interest
 - Identify project sponsors, proponents, lead agencies, and decision-makers
 - Identify the Project Manager, who will be the primary POC for the Corps on the project, as well as the team members and their responsibilities.
 - Include a map of study or project area, including land ownership status
 - Include chart of key project milestones, comment periods, draft plan reviews, final plans, and decision dates. Suggest appropriate points for meetings.
 - Brief discussion of objectives to be accomplished through consultation
 - Identification of specific project/program issues requiring consultation
 - Request for identification of specific issues the Tribe may have with respect to the project.
 - If written agreements are anticipated, identify at this time, if known.
 - Request Tribal POC to work with PM.
- Include list of all Tribal recipients receiving the letter.
- Copies furnished to NAC and other Tribal offices or parties as appropriate (moved)

Follow-up by Phone

- Follow-up phone calls by Project Manager or other team member to Tribe confirming receipt of letters and to determine if there are questions or any additional information needed (allow at least 14 days).
- Confirmation of or initial identification of a point(s) of contact at each Tribe(s) and within the Corps.
- Discuss and schedule initial meetings.
- Through Tribal POC, arrange face-to-face meeting(s) between Corps and Tribe(s), and others early, as appropriate
- Coordinate appropriate and convenient date and location for meeting
- Include appropriate representation from Corps, Tribe(s), and others (Commander, NAC, PM, technical staff – Tribal leadership, staff, etc.)
- Collaborate on purpose of the meeting (information sharing, project status, or decision meeting)
- Identify meeting leaders from Corps and Tribe.
- Collaborate on notification methods (if needed) and any equipment needed (audio-visual)
- Discuss meeting protocol with Tribal POC so traditional ceremonial activities can be conducted at the proper time. (Add info to briefing material provided to Corps attendees).
- Prepare and share advance agenda stating purpose, issues, and participants
- Send letter confirming date, time, and location of meeting and its purpose, including a copy of the suggested agenda.

- Develop itinerary for Corps officials, and alert Lake Project Managers so they can attend.
- Provide material prepared on each tribe to Corps attendees.

Hold Meetings

- Arrange for tape recorder or note-taker.
- Follow meeting protocol identified in briefing materials.
- Follow agenda, but understand that there is a need for flexibility.
- Allow Tribal officials to speak first. Allow them to recount historic events, and allow time for them to “tell their story”.
- Corps officials introduce themselves and give a short description of their involvement with the Corps and the Tribe.
- Discussion:
 - Answer any questions Tribal members may have about the project or process.
 - Identify concerns and issues.
 - Discuss possible resolutions.
 - Find common ground as much as possible. Agree to set aside issues for later discussions if the need arises.
 - Mutually agree upon follow up or action items
- Arrange future meeting dates and locations as appropriate
- Negotiate agreement (i.e., MOA, CA, PA, etc.) as appropriate.

Concluding Consultation

- Based on scope of issue, coordinate with Tribes the appropriate point of closure for the consultation
- Prepare and distribute letter of consultation outcome between the Corps and Tribal leadership
- Jointly identify need for continued consultation
- While official consultation on a specific project may end, ongoing relationships with the Tribe(s) are encouraged. The more trust that is built between Corps team members and Tribal members, the smoother future consultations will be.

DOCUMENTING THE CONSULTATION

- Document all telephone calls, contacts, coordination activities, meetings, etc.
- Prepare and distribute meeting summaries in a timely fashion to all appropriate parties
- Include all documentation in the official project files

The primary program development budgeting process is described in Engineering Circular (EC) 11-2-181. This circular describes the “Corps of Engineers Civil Works Direct Program” and provides guidance on the development and submission of the Corps of Engineers direct Civil Works Program for the current program year and appropriate out year periods. The cultural resources program is part of the Environmental Stewardship business function of the “Operation & Maintenance, General – Project Operation and Maintenance” program, Civil Works direct program. The following paragraphs describe three of the principles that guide the O&M program.

i) Program Development Principles.

(1) General Philosophy. The Operation & Maintenance (O&M) program is developed in recognition of the need to preserve the existing infrastructure and provide justified levels of service at least cost, in accordance with established criteria. In order to do so, the operations portion of the program is constrained to the greatest degree possible so as to maximize the proportion of available resources that can be devoted to maintenance requirements (baseline). In effect, this means that additional management efficiencies must be employed at every opportunity to generate savings that can be applied toward reducing the inventory of un-funded maintenance (non-baseline).

(2) Relationship to Program Execution. Good program execution is an essential ingredient in securing the resources needed to ensure a viable O&M program and thereby continue to provide the Nation with the benefits for which water resources projects were constructed. Development of the program is directly related to program execution. Therefore, it is imperative to develop a sound and realistic program that can be executed as scheduled in accordance with commitments to customers. The baseline programming process has been designed to facilitate both program development as well as execution. If the procedures outlined are implemented in a consistent manner throughout the Corps, the result should be: (1) a credible program that can be defended within the Administration and Congress, (2) a sufficient allowance of O&M funds and (3) a high degree of fiscal performance.

(3) Priorities. The district commanders must ensure that the program request provides balanced and equitable treatment to all business functions (navigation, flood damage reduction, hydropower, environmental stewardship, and recreation).

ii) Program Development and Review Process. Work Packages are developed that clearly and concisely describe the program and what needs to be accomplished in the program year.

(1) Business Functions. The Civil Works O&M program development process reflects the Corps compliance with the requirements of the Government Performance and Results Act of 1993. Therefore, the program will be submitted in a form that reflects the five business processes/functions established for the O&M mission. These business functions are Navigation, Flood Damage Reduction, Hydropower, Environmental Stewardship and Recreation. Cultural Resources is part of the Environmental

Stewardship business function. In addition, each work package will be tied to a business performance measure and goal for the program year. The goals of this program development process are to simplify reporting requirements, reduce the number of program work packages, and create a performance-based program along the lines of the five O&M business functions.

(2) Work Packages. In developing a work package, all costs required to accomplish the work should be included. This includes the cost of the primary activity as well as all supporting activities that are required to accomplish the work. For example, a dredging work package should contain the cost of the actual dredging process plus the costs for before and after surveys, engineering and design, real estate requirements, contract supervision, water quality monitoring, etc. In this way, a complete and stand-alone decision package is developed, thereby avoiding situations where the primary work is funded without the necessary supporting activities, or vice versa. This process applies to all work packages.

(3) Work Package Justification. Every work package must relate to the accomplishment of an approved performance objective. A work package must be justified based on its contribution to attainment of one or more performance goals for the performance measure(s) of its related performance objective(s). The work package justification is presented as part of the funding argument. The amount of justification required depends on the nature of the work package-objective-measure-goal linkage. These linkages and the necessity of the work package to performance goal attainment must be made clear to all levels of reviewers, both internal and external (e.g., OMB or Congress) to the Corps. The impacts of the work package on specific areas of customer service, project performance, infrastructure investment, personnel or public safety, the local community, statutory requirements, or other considerations should be included in the funding argument, especially for packages in the Non-Deferrable and Deferrable levels. Baseline level work package funding arguments should generally remain constant from year to year; however, the funding arguments for other funding level packages are likely to need updating annually as specific work items and corresponding justifications change. All work packages in all levels should have a description and funding argument.

iii) Funding Levels. These funding levels are as follows: Baseline, Non-Deferrable in the Program Year, Deferrable in the Program Year, and Maintenance and Repair Beyond Ability (MRBA). Four levels of funding have been developed for all categories of work based on varying degrees of operation and care of the Nation's capital investment in completed projects. Each work package should consist of work items from a single funding level; similar or related work items that belong in different funding levels should be submitted as separate work packages. The following are general descriptions of the four funding levels:

(1) Baseline. Each of the following criteria must be met in order for a work item to be eligible for this level of funding, a) only the relatively fixed, non-discretionary costs of operating and maintaining Corps projects should be placed in this level, b) the work

must be required to provide a justified level of service at least cost, c) best business practices should be employed to achieve the best value at lowest cost, d) the work is necessary to attain the established Tier II performance goal in the Program Year, e) a work item must have been performed on an annual basis for at least five consecutive years to be *eligible* for baseline level funding. This does *not* mean that a work item *must* be placed in the baseline just because it has been performed five years in a row. Meeting the five-year eligibility criterion alone is not sufficient for a work item to be included in the baseline level.

(2) Non-Deferrable In Program Year. This level includes work packages of a non-annual nature, both one-time and cyclical, such as major maintenance, equipment replacement, dredging, special studies, e.g., major rehabilitation evaluation reports, dam safety reconnaissance reports, and others. This level includes cyclical maintenance items, e.g., periodic maintenance, and maintenance of floating plant. Hired (in-house) and contract labor required to perform non-deferrable work packages should be included as part of these packages. Non-deferrable work packages are for requirements which must be performed in the program year in order to provide for continued project operation at a justified level of service at least cost, and which, if not performed, result in an unacceptable risk of failure to attain the established Tier II performance goal in the Program Year. These work packages, if deferred, would result in a high probability of unsuccessful performance of the project, facility, or function, i.e., contribute to a high risk of failure to attain the established Tier II performance goal in the Program Year.

(3) Deferrable in Program Year. This level includes those O&M work packages of a non-annual nature, both one-time and cyclical, such as major maintenance, equipment replacement, dredging, special studies, and others. These work packages should be performed in the program year, and are reasonable and prudent investments, which are economically and technically justified, to preserve the integrity of the structures and ensure the future operability of the project for the justified level of service at the least cost. Delays in funding these work packages may not necessarily have an adverse impact on the operation of the project in the Program Year but may result in deterioration of project features and, consequently, increased repair costs at the time the work is performed at some future date.

(4) Maintenance and Repair Beyond the Ability of the District (MRBA). This funding level includes those maintenance and repair work packages having a minimum cost of \$100,000, that should be performed to provide the justified level of service at least cost, but would be physically impossible for the district to accomplish during the Program Year, regardless of funding availability.

Note:

The Program Summary contains costing information that is not available to the general public and therefore is not contained in this Program Management Plan. Contact the Cultural Resources Program Manager for the most recent version of the Cultural Resources Program Summary.